

# ISSUE PAPERS 2012 LEGISLATIVE SESSION



DEPARTMENT OF LEGISLATIVE SERVICES 2011

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# **Issue Papers**

## **2012 Legislative Session**

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**Presentation to the  
Maryland General Assembly**

**Department of Legislative Services  
Office of Policy Analysis  
Annapolis, Maryland**

**December 2011**

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Karl S. Aro  
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF POLICY ANALYSIS  
MARYLAND GENERAL ASSEMBLY

December 2011

Warren G. Deschenaux  
Director

Members of the General Assembly:

Prior to each session, staff of the Department of Legislative Services, Office of Policy Analysis, prepare an information report on issues. This document is a compilation of the issue papers arranged by major topic. The information reflects the status of the items as of December 1, 2011.

Following each paper is an identification of the staff who worked on a particular topic. If you should need additional information, please do not hesitate to contact the appropriate staff person.

We trust this information will be of assistance to members of the General Assembly.

Sincerely,

Karl S. Aro  
Executive Director

Warren G. Deschenaux  
Director

WGD/ncs



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# Operating Budget

## Economic and Revenue Outlook

**The outlook for the economy has darkened over the past six months. Economic growth is now expected to be weak for the next several years rather than steadily improving. Since the end of the 2011 legislative session, the general fund revenue estimate for fiscal 2012 has been revised up by \$195 million. However, the projected rate of growth for general fund revenues has been revised down for both fiscal 2012 and 2013.**

### Economic Outlook

The recession that began in December 2007 officially ended in June 2009. Lasting 18 months, the recession was the longest and deepest of the post World War II period. Recent data revisions show that the recession was even deeper than previously thought. Inflation-adjusted gross domestic product fell, peak to trough, 5.1%. Employment fell 6.3%, or 8.8 million jobs. The unemployment rate rose from 4.4% before the recession to 10.1%. Personal income fell 4.3% in 2009, the first annual decline in nominal income since 1949.

Although the recession is over and there have been significant improvements since 2009, growth has been weak and tentative. Since the trough, inflation-adjusted gross domestic product has increased 5.0%, but as of the second quarter of 2011, it remains below the pre-recession peak. Since bottoming out in February 2010, employment has increased by 2.1 million jobs, or 1.6%. Private sector jobs are up 2.6 million (2.4%) since the trough, but government jobs are down 2.2%, or about 0.5 million jobs. Cutbacks in the public sector are now a significant drag on growth. Personal income has grown 5.4% in the first eight months of 2011, helped by the reduction in the payroll tax that began in January.

Most economists expect anemic growth in the U.S. economy for the remainder of 2011. Shocks to the global economy earlier in the year, such as the earthquake in Japan and the spike in oil prices, were thought to be only temporary impediments to a sustained, albeit muted, economic recovery. That scenario is now in question as policy missteps in both the United States (the debt ceiling showdown) and Europe (the European Central Bank raised interest rates twice) have shaken business and consumer confidence in the economy. Economic growth over the next year is likely to be too slow to make much progress in lowering the unemployment rate. The unemployment rate is expected to remain at around 9% throughout 2012 and decline slowly in the years that follow. Current projections have the economy not fully recouping the jobs lost in the recession until late 2014 or 2015. The unemployment rate is not projected to be below 6% until 2015 or later.

In Maryland, recently revised data shows that nominal personal income fell 1.6% in 2009, the first decline in the post-World War II period. Taking into account expected revisions, Maryland employment in 2010 fell about 0.2% (6,100 jobs), the third annual decline. In

September 2011, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, its first since December (**Exhibit 1**). BRE's new forecast expects significantly slower growth over the next several years compared to the previous forecast. Employment is projected to grow around 1.0% for the next three years. Personal income growth is expected to be stronger in 2011 largely due to the payroll tax reduction. The assumed expiration of the payroll tax reduction in 2013 similarly depresses personal income growth in that year.

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**Exhibit 1**  
**Maryland Economic Outlook**  
**Employment and Personal Income**  
**Forecasted Year-over-year Percentage Change**

<b>Calendar Year</b>	<b>Employment</b>		<b>Personal Income</b>	
	<b><u>Dec. 2010</u></b>	<b><u>Sep. 2011</u></b>	<b><u>Dec. 2010</u></b>	<b><u>Sep. 2011</u></b>
2008	-0.3%	-0.3%	3.6%	4.9%
2009	-3.1%	-2.9%	0.4%	-1.6%
2010	-0.4%	-0.2%	2.8%	3.9%
2011E	1.3%	1.0%	3.5%	5.0%
2012E	1.6%	1.0%	4.5%	3.7%
2013E	1.9%	1.2%	5.2%	2.9%
2014E	2.3%	1.7%	5.3%	4.8%

BRE: Board of Revenue Estimates

Note: The figures for 2010 under the December 2010 columns are the BRE's estimates.

Source: Board of Revenue Estimates

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## Revenue Outlook

Fiscal 2011 general fund revenues were above the estimate by \$314.2 million. General fund revenues totaled \$13.5 billion in fiscal 2011, an increase of 5.0% over fiscal 2010 and the first increase since fiscal 2008. The personal income tax accounted for almost all of the overattainment, exceeding expectations by \$304.1 million and growing 7.5% over fiscal 2010. Most of the overattainment came from final payments with returns, which were over the estimate by \$169.0 million, and refunds that were \$171.0 million below the estimate. Fiscal 2011 general fund sales tax receipts grew 3.8% over fiscal 2010, the first increase in three years, but revenues were below the estimate by \$52.2 million. Growth was strong in the first half of fiscal 2011 but weakened considerably in the spring, as rising gas prices cut into other consumer spending.

Fiscal 2012 general fund revenues through September are up 4.6% from last year. Personal income tax revenues grew 4.0%, but growth in withholding was just 1.1%. General fund sales tax

revenues are up 8.2% through September, but that reflects the elimination of the distribution of revenues to the Transportation Trust Fund and the new higher tax of 9.0% on alcoholic beverages. Baseline sales tax receipts are up just 0.6%, although this is only two months worth of data. Reflecting baseline sales tax growth, total general fund revenues are up 2.7%.

The overattainment in fiscal 2011, combined with the downgrade in the economic outlook, results in an upward revision to fiscal 2012 revenues that is substantially smaller than the overattainment in fiscal 2011. In September, BRE raised its estimate for fiscal 2012 general fund revenues by \$195.0 million but also lowered the expected growth rate over fiscal 2011 from 5.2 to 4.2% (**Exhibit 2**). General fund revenue growth is expected to be 2.8% in fiscal 2013. This reflects the elimination of the general fund distribution from highway user revenues. Excluding that change, general fund revenues are projected to grow 4.2% in fiscal 2013, down from 5.7% in fiscal 2012. The forecast assumes that the payroll tax reduction will expire at the end of calendar 2012, thus resulting in slower growth in personal income in calendar 2013. The fiscal 2013 estimate of \$14.5 billion is essentially the same as the projection from the end of the 2011 legislative session. The impact of a weaker economic outlook has offset the benefit of the over-attainment in fiscal 2011, which results in basically no revision to the total general fund estimate for fiscal 2013.

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**Exhibit 2**  
**Maryland General Fund Revenue Forecast**  
**(\$ in Millions)**

	<b>Fiscal 2012</b>				<b>Fiscal 2013</b>	
	<b>BRE December 2010</b>	<b>BRE September 2011</b>	<b>\$ Diff.</b>	<b>% Change 2012/2011</b>	<b>BRE September 2011</b>	<b>% Change 2013/2012</b>
Personal Income Tax	\$6,688	\$7,011	\$323	5.5%	\$7,322	4.4%
Sales & Use Tax	4,164	4,062	-102	11.1%	4,178	2.8%
Corporate Income Tax	623	589	-34	3.0%	739	25.6%
Lottery	504	512	8	2.5%	506	-1.0%
Highway User Revenue	188	191	3	-49.4%	0	-100.0%
Other	1,744	1,741	-2	-2.7%	1,749	0.5%
<b>Total</b>	<b>\$13,910</b>	<b>\$14,105</b>	<b>\$195</b>	<b>4.2%</b>	<b>\$14,494</b>	<b>2.8%</b>

BRE: Board of Revenue Estimates

Note: The estimate from December has been adjusted for actions taken at the 2011 legislative session.

Source: Board of Revenue Estimates



# Operating Budget

## Budget Outlook

Revenue losses associated with the Great Recession of 2007 resulted in a multi-billion dollar structural shortfall that has never been fully resolved. Substantial progress was made by the General Assembly in 2011. The out-year structural deficit, which approached \$2 billion in fall 2010 estimates, has been reduced to \$1 billion. Efforts to restore fiscal equilibrium have included a mix of ongoing revenue and spending actions, in addition to temporizing actions such as federal stimulus aid, transfers of special fund balances, and short-term mandate relief. The uneven recovery, as well as the possible loss of federal funds and jobs, suggest that there still is a downside risk to economic forecasts and place a premium on addressing the State's shortfall sooner rather than later. A range of revenue and spending options should be contemplated at the 2012 session.

## Background

Fiscal 2011 closed with a general fund balance of \$990.1 million, as revenues were \$314.2 million higher than anticipated. General fund revenues totaled \$13.5 billion, an increase of 5.0% over fiscal 2010. As seen in **Exhibit 1**, the personal income tax accounted for almost the entire overattainment, exceeding expectations by \$304.1 million. This was largely due to higher than expected estimated and final payments and withholding, as well as lower than expected refunds. Sales tax receipts saw their first year-over-year increase in three years but did not reach the estimate as rising gasoline prices reduced consumer spending. Corporate income revenue was below the estimate by \$40.0 million. Agency reversions were \$23.8 million higher than expected, and revenue from transfers provided another \$6.1 million. The combination of additional revenues, transfers, and reversions resulted in \$344.0 million in higher fund balance from fiscal 2011.

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### Exhibit 1 Fiscal 2011 Estimated vs. Actual General Fund Revenue Performance (\$ in Millions)

	<u>FY 2011 Estimated</u>	<u>FY 2011 Actual</u>	<u>Change</u>
Personal Income Tax	\$6,339.3	\$6,643.4	\$304.1
Sales Tax	3,708.3	3,656.0	-52.3
Corporate Income Tax	611.3	571.3	-40.0
Miscellaneous	319.0	386.2	67.2
Other	2,245.3	2,280.5	35.2
<b>Total</b>	<b>\$13,223.2</b>	<b>\$13,537.4</b>	<b>\$314.2</b>

Source: Department of Legislative Services

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## Fiscal 2012 Activity

**Exhibit 2** illustrates that fiscal 2012 is projected to end with a general fund balance of \$96 million, which is about \$40 million greater than expected when the budget was enacted at the 2011 session. This higher balance is the result of a combination of fiscal 2011 fund balance and revised revenues, offset by the need for estimated deficiencies to address potential spending shortfalls. As noted, \$344 million in additional balance came from the fiscal 2011 closeout. Added to that is approximately \$195 million in revenue projected for fiscal 2012 by the Board of Revenue Estimates in September 2011, less a minor revision in revenue from the Sustainable Community Tax Credit. The Department of Legislative Services (DLS) has estimated that spending shortfalls approaching \$500 million in general funds are needed in the current fiscal year. The bulk of this is due to prior year Medicaid expenses, lower than expected video lottery terminal revenue that supports education aid, and shortfalls for low-income energy assistance and program supported by federal Temporary Assistance for Needy Families funds.

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### Exhibit 2 Evolution of the Fiscal 2012 General Fund Balance (\$ in Millions)

	<u>FY 2012</u>
<b>Estimated Closing Balance (April 2011)</b>	<b>\$56</b>
Revenue	
Fiscal 2011 Closeout	\$344
September 2011 BRE Revenue Revision	195
Revised Sustainable Communities Tax Credit	-8
Spending	
DLS Estimated Fiscal 2012 Deficiencies	-491
<b>Revised Closing Balance (November 2011)</b>	<b>\$96</b>

BRE: Board of Revenue Estimates  
DLS: Department of Legislative Services

Source: Department of Legislative Services

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## **Fiscal 2012 through 2017 Forecast**

**Exhibit 3** provides the DLS general fund forecast through fiscal 2017. As shown, the State faces immediate challenges in producing a balanced fiscal 2013 spending plan. There is a projected cash shortfall of \$1.0 billion. Revenue losses associated with the Great Recession of 2007 resulted in a multi-billion dollar structural shortfall that has never been fully resolved. While ongoing spending reductions and revenue increases have been adopted each year, budgets have also been supported by a variety of one-time and short-term actions including federal stimulus funds, transfers, short-term revenues, and limited mandate relief.

In the out-years of the forecast, a rough level of equilibrium has been established. Revenues are projected to grow on average by 4.6% per year, while ongoing spending (exclusive of the mitigating effects of video lottery terminal offsets to education spending) grows 4.2% per year. In fiscal 2014 and beyond, video lottery terminal revenue to the Education Trust Fund is projected to mature and provide approximately \$450 million per year. Throughout the forecast period, the deficit remains at just below \$1 billion. One of the larger drivers of spending in the out-years is debt service on general obligation bonds, which requires supplementary general fund spending. Increased debt authorizations and slumping housing prices have combined to sap the balances in the Annuity Bond Fund, which receives the State's share of the property tax. By fiscal 2017, nearly one-half of the general fund deficit, or \$433 million, would be needed to supplement property tax revenue to pay debt service expenses.

The forecast also contains downside risks that could worsen the State's fiscal position. Unemployment remains high, and economic activity has been weak and tentative. There is concern that the nation could experience a double-dip recession. Financial instability in several European countries has rattled financial markets but could also affect U.S. export markets as fiscal austerity measures are adopted. Finally, efforts to reduce the federal budget deficit by more than \$1 trillion over the next 10 years could affect federal aid to Maryland but also affect State tax revenues if federal employment and procurement are curtailed. These risks highlight the need for expeditious action to address the ongoing general fund deficit.



**Exhibit 3**  
**General Fund Projections**  
**Fiscal 2012-2017**  
**(\$ in Millions)**

	<u>Actual</u> <u>2011</u>	<u>Working</u> <u>2012</u>	<u>Baseline</u> <u>2013</u>	<u>Est.</u> <u>2014</u>	<u>Est.</u> <u>2015</u>	<u>Est.</u> <u>2016</u>	<u>Est.</u> <u>2017</u>	<u>Avg.</u> <u>Annual</u> <u>Change</u> <u>2013-17</u>
<b>Revenues</b>								
Opening Fund Balance	\$344	\$990	\$96	\$0	\$0	\$0	\$0	
Transfers	390	240	333	75	62	59	59	
<b>Subtotal One-time Revenue</b>	<b>\$734</b>	<b>\$1,230</b>	<b>\$429</b>	<b>\$75</b>	<b>\$62</b>	<b>\$59</b>	<b>\$59</b>	<b>-39.1%</b>
Ongoing Revenues	\$13,537	\$14,105	\$14,494	\$15,033	\$15,861	\$16,636	\$17,340	
<b>Subtotal Ongoing Revenue</b>	<b>\$13,537</b>	<b>\$14,105</b>	<b>\$14,494</b>	<b>\$15,033</b>	<b>\$15,861</b>	<b>\$16,636</b>	<b>\$17,340</b>	<b>4.6%</b>
<b>Total Revenues and Fund Balance</b>	<b>\$14,271</b>	<b>\$15,335</b>	<b>\$14,923</b>	<b>\$15,108</b>	<b>\$15,923</b>	<b>\$16,695</b>	<b>\$17,399</b>	<b>3.9%</b>
<b>Ongoing Spending</b>								
Operating Spending*	\$14,858	\$15,275	\$15,776	\$16,564	\$17,262	\$17,979	\$18,755	
VLT Spending Supporting Education	-64	-101	-254	-457	-458	-459	-460	
Multi-year Commitments	10	7	7	7	7	7	7	
<b>Subtotal Ongoing Spending</b>	<b>\$14,804</b>	<b>\$15,181</b>	<b>\$15,529</b>	<b>\$16,114</b>	<b>\$16,812</b>	<b>\$17,527</b>	<b>\$18,301</b>	<b>4.2%</b>
<b>One-time Spending</b>								
PAYGO Capital	\$1	\$48	\$1	\$1	\$1	\$1	\$1	
One-time Reductions/Fund Swaps	-350	0	0	0	0	0	0	
Federal Stimulus Funds	-1,189	-5	0	0	0	0	0	
Appropriation to Reserve Fund	15	15	405	115	115	100	100	
<b>Subtotal One-time Spending</b>	<b>-\$1,523</b>	<b>\$58</b>	<b>\$406</b>	<b>\$116</b>	<b>\$116</b>	<b>\$101</b>	<b>\$101</b>	<b>n/a</b>
<b>Total Spending</b>	<b>\$13,281</b>	<b>\$15,239</b>	<b>\$15,935</b>	<b>\$16,230</b>	<b>\$16,928</b>	<b>\$17,628</b>	<b>\$18,402</b>	<b>3.7%</b>
<b>Ending Balance</b>	<b>\$990</b>	<b>\$96</b>	<b>-\$1,012</b>	<b>-\$1,122</b>	<b>-\$1,005</b>	<b>-\$933</b>	<b>-\$1,004</b>	
Rainy Day Fund Balance	\$624	\$681	\$725	\$751	\$793	\$832	\$866	
Balance Over 5% of GF Revenues	-53	-24	0	0	0	0	-1	
As % of GF Revenues	4.61%	4.83%	5.00%	5.00%	5.00%	5.00%	5.00%	
<b>Structural Balance</b>	<b>-\$1,266</b>	<b>-\$1,076</b>	<b>-\$1,034</b>	<b>-\$1,081</b>	<b>-\$950</b>	<b>-\$891</b>	<b>-\$962</b>	

\* Includes \$491 million in projected fiscal 2012 deficiency appropriations.

GF: general fund

PAYGO: pay-as-you-go

VLT: video lottery terminals

Source: Department of Legislative Services

## **Conclusion**

The State saw a significant drop in revenue owing to the effects of the Great Recession, resulting in a structural deficit as high as \$2 billion. Efforts to restore fiscal equilibrium have included a mix of ongoing revenue and spending actions, in addition to temporizing actions such as federal stimulus aid, transfers of special fund balances, and short-term mandate relief. As a result, DLS projects an ongoing \$1 billion shortfall in the general fund which is largely driven by rapidly growing debt service expense. Downside risks remain for the forecast period as tepid economic growth and high unemployment continue to dampen consumer spending. Federal and European efforts to address sovereign deficits could also affect State revenues, as Maryland is highly dependent on federal employment and procurement spending. These risks place a premium on addressing the State's shortfall sooner rather than later.



# Operating Budget

## Transportation Trust Fund Overview

**The Transportation Trust Fund's ending cash balance for fiscal 2011 exceeded estimates, and future annual average growth in transportation revenues is estimated at just under 5%. The Department of Legislative Services estimates, however, that this revenue growth will constrain debt issuances and the capital program.**

### Fiscal 2011 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2011 with a fund balance of \$221 million, \$121 million higher than the \$100 million projected. The higher fund balance is a result of revenues being \$29 million higher than expected and spending \$92 million less than expected.

Tax and fee revenues were \$46 million higher than expected, with the titling tax \$24 million over the estimate due to vehicle unit sales and increased prices in fiscal 2011. Motor fuel tax revenue was \$23 million higher than expected; however, fiscal 2011 revenue is inflated due to an accounting change that will result in decreased revenues in fiscal 2012. Other receipts and adjustments add \$58 million, largely due to operating revenues being \$18 million higher than expected and federal reimbursements related to the 2010 winter storms. With revenues higher than expected and spending less than expected, the Maryland Department of Transportation (MDOT) did not issue \$75 million in bonds that were previously projected.

Capital budget expenditures were \$96 million less than the estimate due to funding being transferred to support winter maintenance expenditures and cash flow changes in project spending. Minor changes in highway user revenues, general fund distributions, debt service, and operating spending result in a net decrease of \$4 million.

### Fiscal 2012-2017 Transportation Trust Fund Forecast

**Exhibit 1** shows the fiscal 2012-2017 TTF forecast by the Department of Legislative Services (DLS). The forecast details the expected trends in revenue attainment, debt issuance, and capital expenditures. Compared to MDOT's forecast, DLS assumes an economic recovery beginning in fiscal 2013 but less robust growth in revenues, higher operating budget spending for transit and winter maintenance expenditures, and reduced bond sales due to the constraints of the department's bond coverage ratios. As such, DLS projects a special fund capital program that is approximately \$1.1 billion less than MDOT's over the six-year period.

**Exhibit 1**  
**Department of Legislative Services**  
**Transportation Trust Fund Forecast**  
**Fiscal 2012-2017**  
**(\$ in Millions)**

	<u>Actual</u> <u>2011</u>	<u>Est.</u> <u>2012</u>	<u>Est.</u> <u>2013</u>	<u>Est.</u> <u>2014</u>	<u>Est.</u> <u>2015</u>	<u>Est.</u> <u>2016</u>	<u>Est.</u> <u>2017</u>	<u>Total</u> <u>2012-2017</u>
<b>Opening Fund Balance</b>	<b>\$234</b>	<b>\$221</b>	<b>\$100</b>	<b>\$100</b>	<b>\$100</b>	<b>\$100</b>	<b>\$100</b>	
<b>Closing Fund Balance</b>	<b>\$221</b>	<b>\$100</b>	<b>\$100</b>	<b>\$100</b>	<b>\$100</b>	<b>\$100</b>	<b>\$100</b>	
<b>Net Revenues</b>								
Taxes and Fees	\$1,739	\$1,810	\$1,971	\$2,126	\$2,203	\$2,249	\$2,274	\$12,634
Operating & Misc.	552	491	501	504	508	513	519	3,035
Transfers btw. TTF and GF	0	-50	0	0	0	0	0	-50
<b>Net Revenues Subtotal</b>	<b>\$2,311</b>	<b>\$2,251</b>	<b>\$2,472</b>	<b>\$2,630</b>	<b>\$2,711</b>	<b>\$2,762</b>	<b>\$2,793</b>	<b>\$15,620</b>
Bonds Sold	0	250	190	140	130	120	110	940
<b>Total Revenues</b>	<b>\$2,311</b>	<b>\$2,501</b>	<b>\$2,662</b>	<b>\$2,770</b>	<b>\$2,842</b>	<b>\$2,882</b>	<b>\$2,903</b>	<b>\$16,561</b>
<b>Expenditures</b>								
Debt Service	\$156	\$180	\$193	\$217	\$238	\$248	\$275	\$1,351
Operating Budget	1,546	1,602	1,677	1,768	1,879	1,985	2,097	11,008
State Capital	621	841	793	786	724	649	531	4,324
<b>Total Expenditures</b>	<b>\$2,323</b>	<b>\$2,623</b>	<b>\$2,663</b>	<b>\$2,772</b>	<b>\$2,841</b>	<b>\$2,882</b>	<b>\$2,903</b>	<b>\$16,683</b>
<b>Debt</b>								
Debt Outstanding	\$1,562	\$1,459	\$1,540	\$1,549	\$1,534	\$1,499	\$1,435	
Debt Coverage -- Net Income	2.6	3.1	2.6	3.0	3.2	3.0	2.8	
<b>Local Highway User Revenues</b>	<b>\$139</b>	<b>\$149</b>	<b>\$161</b>	<b>\$167</b>	<b>\$173</b>	<b>\$176</b>	<b>\$178</b>	<b>\$1,004</b>
HUR Transfer to GF	377	187	0	0	0	0	0	187
<b>Capital Summary</b>								
State Capital	\$621	\$841	\$793	\$786	\$724	\$649	\$531	\$4,324
Net Federal Capital (Cash Flow)	614	760	759	740	423	341	337	3,360
<b>Subtotal Capital Expenditures</b>	<b>\$1,235</b>	<b>\$1,601</b>	<b>\$1,552</b>	<b>\$1,526</b>	<b>\$1,147</b>	<b>\$990</b>	<b>\$868</b>	<b>\$7,684</b>
GARVEE Debt Service	87	87	87	87	87	87	87	525

GARVEE: Grant Anticipation Revenue Vehicle  
GF: general fund

HUR: highway user revenue  
TTF: Transportation Trust Fund

## **Revenues**

Over the six-year period, DLS estimates that net tax and fee revenue will total approximately \$12.6 billion, with an annual average growth rate of 4.7%. Total titling tax revenue is expected to grow modestly in fiscal 2012 and then increase in fiscal 2013 as the economy recovers, before returning to more historical growth rates. Over the six-year period, DLS estimates less robust average annual growth than MDOT, with titling tax revenues estimated to be \$351 million less than MDOT's estimate. DLS estimates that motor fuel tax revenue will be \$83 million higher than MDOT's estimate over the six-year period. In addition, miscellaneous Motor Vehicle Administration (MVA) fees are \$120 million less in the DLS forecast than MDOT's. By law, MVA's fee revenue cannot exceed 100.0% of expenditures or fees need to be reduced. The DLS forecast assumes that MVA fee revenue will be less than the 100.0% limit.

## **Operating and Debt Service Expenditures**

Operating and debt service expenditures are the first draw on TTF revenues. Over the six-year period, operating and debt service expenditures are estimated to total \$12.4 billion. Compared to MDOT's forecast, the DLS forecast assumes that operating budget expenditures will be \$304 million higher than MDOT's. Operating budget expenditures are expected to grow by 5.5% compared to tax and fee growth of 4.7%. With operating budget growth outpacing revenue growth, the department's ability to issue debt is constrained. As a result of reduced debt issuances, DLS estimates that debt service costs will be \$84 million less than projected by MDOT.

## **Debt Financing**

Debt issued by MDOT supports the capital program. Debt issuances are limited by a total debt outstanding cap of \$2.6 billion and two coverage tests that require the prior year's pledged taxes and net income to be at least two times greater than the maximum debt service in a given fiscal year. DLS assumes the net income coverage ratio will be 2.5 times through fiscal 2021, consistent with MDOT's administrative practice. Due to DLS estimates of lower revenue and higher operating budget spending, the level of net income is reduced and debt issuances for the capital budget are constrained. Over the six-year period, DLS estimates bond sales will total \$940 million or \$535 million less than estimated by MDOT.

## **Capital Expenditures**

DLS estimates that the total special and federal capital budget will total \$7.7 billion over the six-year period, approximately \$1.1 billion less than MDOT's estimate in the draft 2012-2017 *Consolidated Transportation Program*. As previously discussed, the decline in the capital budget is attributable to downward revenue revisions and higher estimates for operating expenses, which in turn constrain future debt issuances. In fiscal 2012, the capital program is

largely maintained with a \$250 million bond sale and will total \$1.6 billion. Beginning in fiscal 2013, the capital program declines slightly and totals \$868 million by fiscal 2017.

# Operating Budget

## Federal Funds Outlook

In fiscal 2012, federal funds total \$9.3 billion. The extent to which federal fund support changes over the next year is unclear. To date, none of the federal fiscal 2012 appropriations bills has been enacted. In April and August 2011, the budget battles almost led to a shutdown of the federal government. In August 2011, the President signed the Budget Control Act, which puts in place a process for reducing the federal deficit. Three major federal programs – surface transportation, Federal Aviation Administration, and Temporary Assistance for Needy Families – are operating under short-term reauthorizations.

The fiscal 2012 federal fund legislative appropriation totals \$9.3 billion. **Exhibit 1** shows the distribution of the federal funds by department/service area.

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### Exhibit 1 Federal Funds in Fiscal 2012 Legislative Appropriation (\$ in Millions)

<u>Department/Service Area</u>	<u>Fiscal 2012 Legislative Appropriation</u>
Judicial and Legal Review	\$6.5
Executive and Administrative Control	195.2
Budgetary and Personnel Administration	51.1
General Services	1.1
Transportation	915.1
Department of Natural Resources	35.0
Agriculture	4.2
Health and Mental Hygiene	4,569.3
Human Resources	1,954.2
Labor, Licensing, and Regulation	175.8
Public Safety and Correctional Services	28.5
Public Education	1,024.9
Housing and Community Development	263.8
Business and Economic Development	1.8
Environment	91.7
Juvenile Services	10.5
State Police	1.4
Public Debt	11.1
<b>Total Federal Funds</b>	<b>\$9,341.1</b>

Source: *Fiscal Digest of the State of Maryland for the Fiscal Year 2011*

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## **Federal Budget and Reauthorizations Stalled**

### **Congressional Action on Federal Fiscal 2012 Budget**

Congress failed to enact any of the 12 appropriations bills to fund the federal government before October 1, 2011, the start of federal fiscal 2012. As of October 25, 2011, the House had passed six of the bills and the Senate had passed one. To keep the government running, Congress has passed two continuing resolution bills, the most recent of which provides spending authority through November 18, 2011, and includes a 1.503% across-the-board cut on all discretionary spending to meet the \$1.043 trillion discretionary limit set by the Budget Control Act of 2011 (BCA).

### **Budget Control Act of 2011**

After months of negotiations on raising the federal debt ceiling, the Congress passed and the President signed the BCA on August 2, 2011. The BCA provides for increases in the debt ceiling and puts in place a process for deficit reduction. The BCA imposed caps on discretionary spending that are estimated to save \$917 billion over 10 years. In addition, it created a Joint Select Committee (often referred to as the “Super Committee”) to make recommendations to further reduce the deficit over 10 years by at least \$1.2 trillion. Should the committee fail to recommend, or the Congress and President fail to enact legislation that reduces the deficit by at least \$1.2 trillion, automatic cuts to discretionary spending – split evenly between defense and non-defense accounts – automatically occur beginning in fiscal 2013. The BCA also requires Congress to vote on a balanced budget amendment to the Constitution.

The BCA contains deadlines for action as follows:

- November 23, 2011 – the Joint Select Committee must submit its plan for deficit reduction;
- December 23, 2011 – the Congress must vote up or down on legislation produced by the Joint Select Committee;
- January 15, 2012 – the final deadline for passage of deficit reduction legislation totaling at least \$1.2 trillion or automatic cuts are triggered and will start in January 2013; and
- January 2, 2013 – automatic cuts go into effect if legislation is not enacted reducing the deficit by at least \$1.2 trillion.

Deficit reduction can be accomplished through spending cuts, revenue increases, or any combination of the two. If automatic spending cuts are triggered, the difference between any deficit reduction actions taken and \$1.2 trillion will be divided equally over nine years with the annual reduction split evenly between defense and non-defense accounts.

Automatic spending cuts, if triggered, will be based on the federal fiscal 2012 spending levels which have not yet been set by Congress. If the full \$1.2 trillion reduction is made through the automatic reduction process, total discretionary spending would decrease in fiscal 2013 but would increase each year thereafter at a lower rate than assumed in the current Congressional Budget Office baseline forecast.

### **Federal Programs Needing Reauthorization**

Three major federal programs – surface transportation, the Federal Aviation Administration, and Temporary Assistance for Needy Families – are all operating under short-term reauthorizations which expire before the end of fiscal 2012.



# Capital Budget

## Debt Affordability

**The Capital Debt Affordability Committee recommended a general obligation (GO) bond debt limit totaling \$925.0 million for fiscal 2013. This is the same level that was recommended for fiscal 2012. This is necessary to keep debt service payments below 8% of revenues. The Treasurer's Office estimates that total tax-supported debt service will be \$1.3 billion in fiscal 2013. GO bond debt service is projected to total \$921.3 million in fiscal 2013. Total State debt outstanding is projected to be \$11.0 billion at the end of fiscal 2013, of which \$7.8 billion in general obligation bond debt. Based on current estimates, the State can accelerate \$700 million in GO bond authorizations to fiscal 2013 and 2014, but this would reduce fiscal 2015 and 2016 authorizations by \$800 million.**

## Capital Debt Affordability Process

State law requires the Capital Debt Affordability Committee (CDAC) to review the size and condition of all tax-supported debt to ensure that the State's tax-supported debt burden remains affordable. The committee is composed of the Treasurer, the Comptroller, the Secretaries of the Maryland Department of Transportation and the Department of Budget and Management, and a public member. Chapter 445 of 2005 added, as nonvoting members, the chairs of the Capital Budget Subcommittees for the Senate Budget and Taxation Committee and the House Appropriations Committee.

Tax-supported debt consists of general obligation (GO) debt, transportation debt, Grant Anticipation Revenue Vehicles (GARVEE), bay restoration bonds, capital leases, Stadium Authority debt, and bond or revenue anticipation notes. The committee makes annual, nonbinding recommendations to the Governor and the General Assembly on the appropriate level of new GO and academic revenue debt for each fiscal year. The committee does not make individual recommendations on the levels of capital leases, transportation debt, bay restoration bonds, or Stadium Authority debt but does incorporate the anticipated levels of these types of debt in its analysis of total debt affordability.

## Affordability Criteria and Ratios

CDAC began evaluating State debt in 1979. In consultation with rating agencies, investment bankers, and its financial advisor, CDAC has adopted policies to limit State debt outstanding to 4.0% of personal income and State debt service to 8.0% of State revenues. **Exhibit 1** shows the Department of Legislative Services' (DLS) State debt affordability analysis. The analysis assumes similar estimates for GO bonds, transportation debt, GARVEEs, bay restoration bonds, and Stadium Authority debt issuances. Since the CDAC has recommended its debt limits, estimates of Video Lottery Terminal (VLT) revenues deposited into the Education

Trust Fund have been revised. DLS' analysis includes these revised VLT revenue estimates. The analysis also assumes that the State will need to enter into VLT leases for Baltimore City and Rocky Gap facilities and that leases for all facilities will need to be renewed when the current leases expire. DLS' revised analysis of debt affordability for fiscal 2012 through 2021 indicates that debt outstanding peaks in fiscal 2013 at 3.48% of personal income, and debt service peaks in fiscal 2018 at 7.89%.

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**Exhibit 1**  
**Affordability Ratios**  
**Fiscal 2012-2021**

<u>Fiscal Year</u>	<u>Projected Debt Outstanding As a Percent of Personal Income</u>	<u>Projected Debt Service As a Percent of Revenues</u>
2012	3.35%	6.82%
2013	3.48%	6.92%
2014	3.47%	7.38%
2015	3.36%	7.54%
2016	3.23%	7.74%
2017	3.16%	7.87%
2018	3.34%	7.89%
2019	3.07%	7.66%
2020	2.99%	7.40%
2021	2.97%	7.28%

Source: Department of Legislative Services, November 2011

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### **New Debt Authorizations**

The committee has recommended \$925 million in new GO debt authorization for fiscal 2013. This is equal to the amount recommended for fiscal 2012, but \$215 million less than was authorized in fiscal 2011 when authorizations peaked. GO bond authorizations are reduced to keep debt service below 8% of revenues. Based on the current level of authorizations, the committee estimates that total GO debt will be \$7.8 billion at the end of fiscal 2013. GO bond debt service payments are projected to total \$921 million in fiscal 2013.

Transportation bonds are limited obligation instruments, the proceeds of which fund highway and other transportation-related projects. Debt service on these bonds is funded from motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other Maryland Department of Transportation revenues. The gross outstanding aggregate principal amount of Consolidated Transportation Bonds is limited by statute to \$2.6 billion. CDAC projects that total outstanding transportation debt is projected to reach \$1.9 billion in fiscal 2013. Transportation bond debt service is projected to be \$197 million in fiscal 2013. The department also issued GARVEE bonds in fiscal 2008 and 2009. Chapters 471 and 472 of 2005 limit the total amount of GARVEEs that may be issued at \$750 million. The State pledges

anticipated federal revenues to support the GARVEE debt service, and statute specifies that the bonds are considered tax-supported debt. GARVEE debt outstanding is projected to be \$479 million at the end of fiscal 2012. GARVEE debt service costs are estimated to be \$87 million.

The Bay Restoration Fund was created by Chapter 428 of 2004 to provide grants for enhanced nutrient removal pollution reduction upgrades at the State's major wastewater treatment plants. The fund has several revenue sources and expends funds for both operating and capital program purposes. In fiscal 2008, the first \$50 million in bay bonds was issued. The Maryland Department of the Environment indicates that the estimated issuance stream is \$50 million, \$170 million, \$160 million, and \$100 million in fiscal 2012 through 2015, respectively. The department estimates that \$254 million in bonds will be outstanding at the end of fiscal 2013. Debt service costs are projected to be \$10 million in fiscal 2013.

Capital leases for real property and equipment are also considered State debt if the revenues supporting the debt are State tax revenues. Examples of capital leases include the St. Mary's County Multi-service Center, Maryland Department of Transportation Headquarters Office Building, and Prince George's County Justice Center. Debt outstanding for leases is expected to be \$383 million at the end of fiscal 2013. Capital lease payments are estimated to be \$44 million in fiscal 2013.

The final category of State debt is Maryland Stadium Authority debt. Stadium Authority debt is also limited obligation debt and represents bonds sold for the construction of the Camden Yards baseball and football stadiums, the Baltimore and Ocean City convention centers, the Hippodrome Theater, and the Montgomery County Conference Center. The facilities' debt service is supported by lottery revenues and other general fund sources. Stadium Authority debt outstanding is expected to be \$200 million at the end of fiscal 2013. Debt service payments are projected to be \$33 million in fiscal 2013.

The University System of Maryland (USM), Morgan State University, and St. Mary's College of Maryland have the authority to issue debt for academic facilities, as well as auxiliary facilities. Unlike the other authorizations, Academic Revenue Bonds are not considered to be State debt; instead, they are a debt of the institutions. Proceeds from academic debt issues are used for facilities that have an education-related function, such as classrooms. Debt service for these bonds is paid with tuition and fee revenues. For fiscal 2013, CDAC recommends \$32 million for academic facilities on USM campuses. This is \$5 million more than was recommended in fiscal 2012. The increase supports a \$5 million matching grant to GO bonds for infrastructure improvements.

## **Effect of Accelerating GO Bond Authorizations**

Recently, policymakers have discussed increased infrastructure spending as a means of addressing critical needs and at the same time boosting employment and the State's economy. To the extent that these investments are debt financed, the schedule of authorizations envisioned

by CDAC will need to be modified. An analysis performed by DLS indicates that as much as \$700 million can be accelerated from years fiscal 2015 and 2016 to enhance fiscal 2013 and 2014 without violating CDAC criteria. However, this would reduce fiscal 2015 and 2016 authorizations by \$800 million. **Exhibit 2** shows the effect on GO bond authorizations. Debt capacity would be increased in all years to the extent revenues are greater than forecast, either through unanticipated economic growth or statutory changes.

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**Exhibit 2**  
**Effect of Accelerating General Obligation Bond Authorizations**  
**(\$ in Millions)**

<u>Fiscal Year</u>	<u>CDAC Program Size</u>	<u>Change in Authorizations</u>	<u>Revised Program Size</u>
2013	\$925	\$500	\$1,425
2014	925	200	1,125
2015	935	-500	435
2016	945	-300	645
2017	955	0	955
2018	1,200	0	1,200
2019	1,240	0	1,240
2020	1,280	0	1,280
2021	1,320	0	1,320

Source: Department of Legislative Services, November 2011

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# Capital Budget

## Capital Budget Outlook

**As in previous years, the agencies' capital budget requests exceed the proposed general obligation bond (GO) authorizations. To meet affordability guidelines, the State has begun reducing GO bond authorizations. In response to the operating budget deficit, the State has moved capital projects previously funded in the operating budget into the capital budget.**

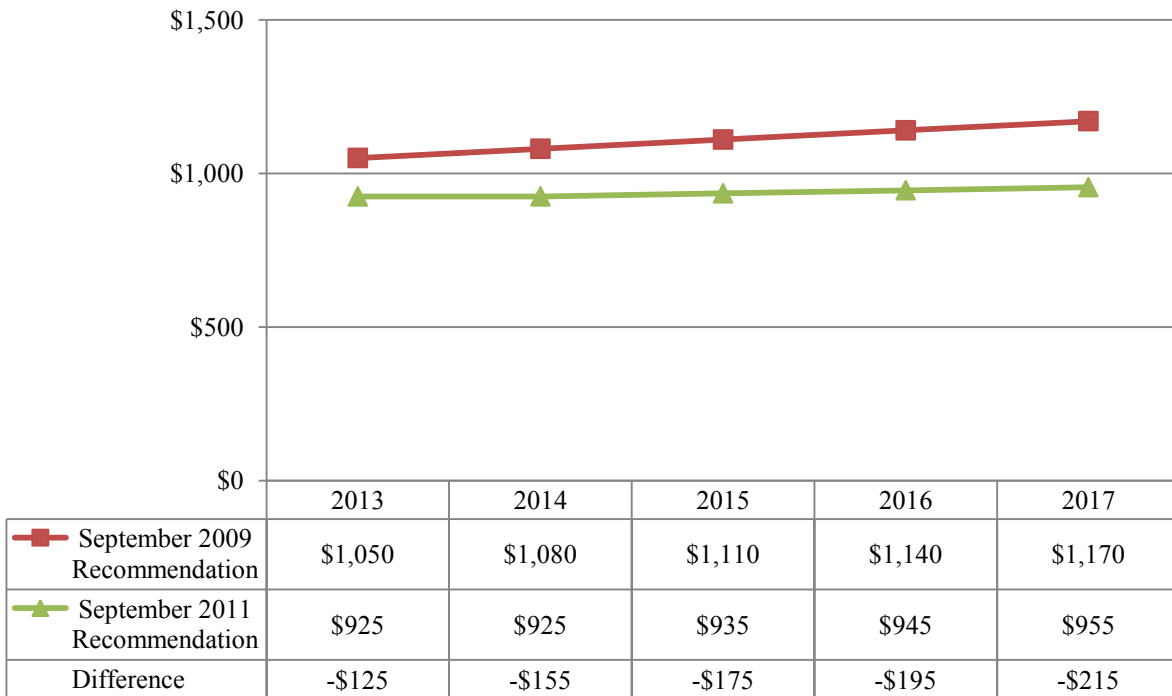
The State is faced with the task of programming funding for its capital infrastructure needs amidst a fiscal climate marked by declining State revenues, limited general obligation (GO) bond capacity within debt affordability limits, and pressure to shift bondable operating expenditures to the capital budget. These factors compound an already difficult task of prioritizing agency capital requests which annually far exceed Capital Debt Affordability Committee (CDAC) recommended GO bond limits.

### Reduced Planned GO Bond Authorizations Restrain Capital Program

The current fiscal and economic climate has pushed the State to the debt affordability ratio benchmarks – State tax-supported debt outstanding should be no more than 4% of State personal income, and debt service on State tax-supported debt should require no more than 8% of revenues. To account for these pressures, CDAC reduced the planned level of new GO bond authorizations prior to the 2010 session. **Exhibit 1** shows that the CDAC's long-term forecast for new GO bond authorization levels, as reflected in its 2011 report, is consistent with its revised 2009 recommendation and continues the period of constrained authorization levels. Overall, the recommendation provides \$865 million less over the five-year planning period compared to what was initially recommended in the committee's September 2009 report. While the reduction in planned spending levels serves the immediate purpose of keeping the State within its self-imposed debt affordability limits, it also constrains the ability of the capital program to fund new infrastructure throughout the State.



**Exhibit 1**  
**Effect of New Policy on General Obligation Bond Authorizations**  
**2013-2017 Legislative Sessions**  
**(\$ in Millions)**

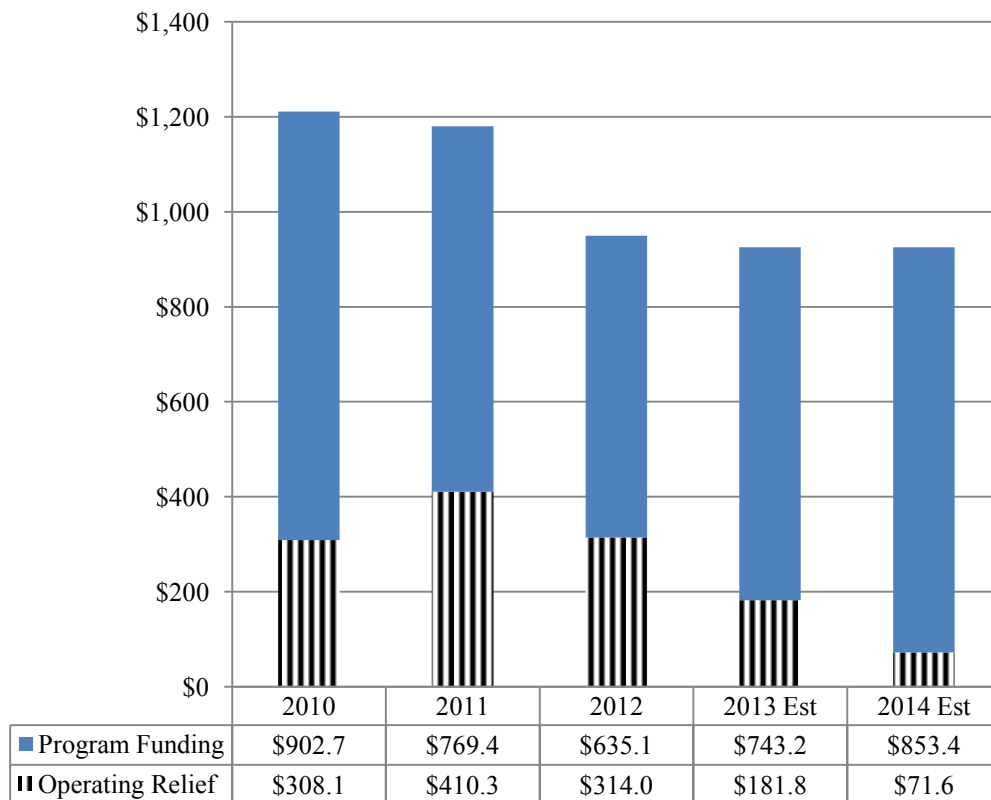


Source: *Report of the Capital Debt Affordability Committee on Recommended Debt Authorizations, 2009 and 2011*

### Use of GO Bonds to Relieve Pressure on the Operating Budget

Another factor that has limited the capacity of the capital program to respond to State and local infrastructure needs includes the use of GO bond authorizations as a source of replacement funding for various special fund transfers to the general fund. Such transfers have been used to aid in balancing the State's annual operating budget. **Exhibit 2** shows the degree to which GO bonds are being used as a budget balancing instrument. For fiscal 2010 through 2012, approximately 31% of the total GO bond authorizations has been allocated to replace transfers to the general fund and as a source of alternative pay-as-you-go funding. Moreover, because the replacement plan spans over multiple fiscal years, a portion of the GO authorizations planned for the 2012 and 2013 sessions, \$181.8 million and \$71.6 million, respectively, is already essentially obligated to this endeavor. Finally, fiscal pressures could invite continued similar use of GO bond authorizations as an operating budget balancing instrument in the 2012 session, which would likely increase and extend the impact this policy is having on the bond program.

**Exhibit 2**  
**Use of General Obligation Bonds for Operating Budget Relief**  
**Fiscal 2010-2012 Actual and Fiscal 2013-2014 Estimated**  
**(\$ in Millions)**

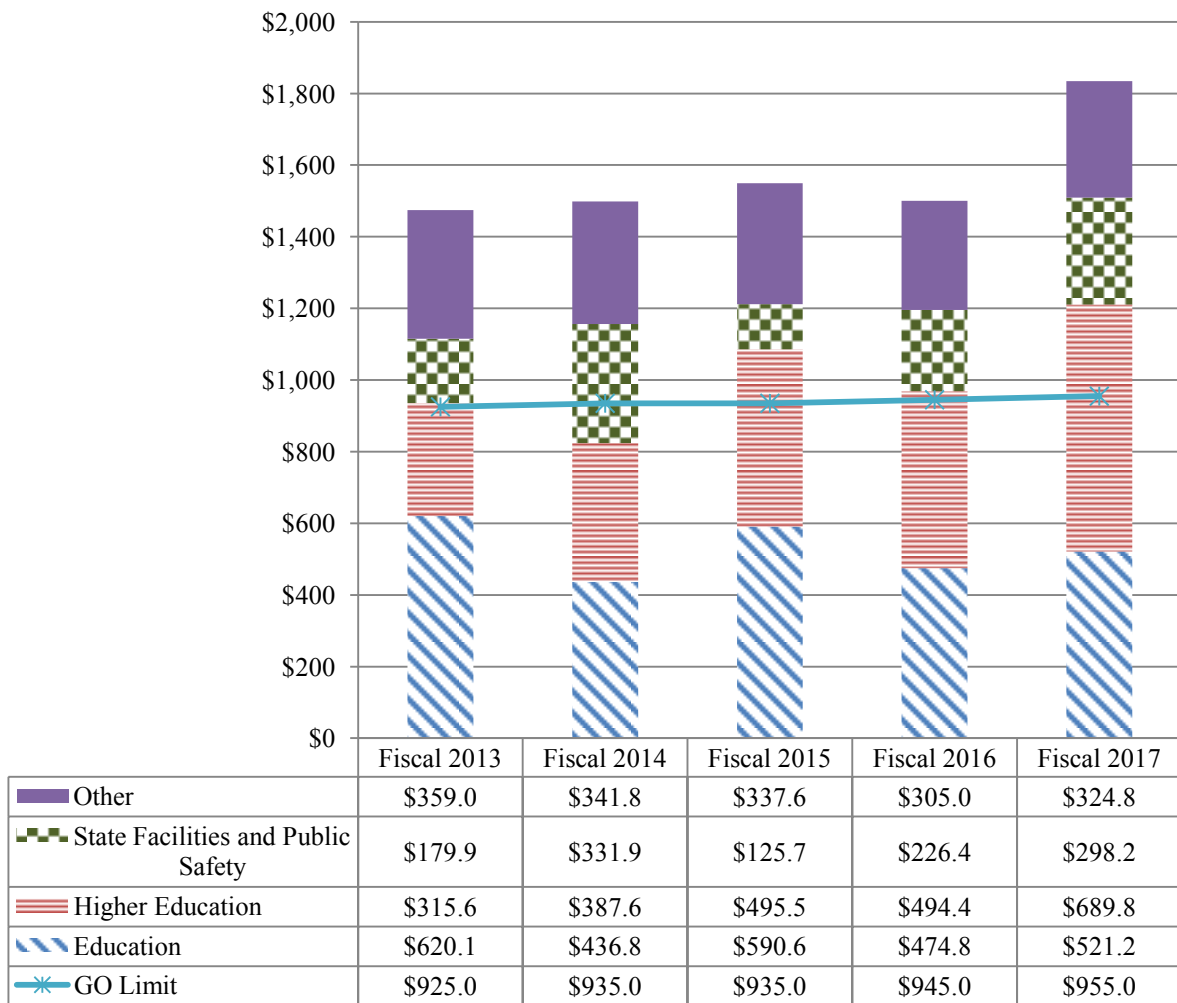


Source: Department of Legislative Services, *The 90 Day Report*

### Agency Requests Exceed Proposed GO Bond Authorizations

Balancing the State's capital infrastructure funding needs amidst the pressures created by declining State revenues, limited GO bond capacity, and use of the limited GO bond capacity to resolve operating budget pressures compounds the already difficult task of allocating scarce resources. Agency requests for fiscal 2013 total \$1.48 billion, over \$550 million more than the amount available under the recommended GO bond debt limit of \$925 million. Capital requests for the next five years total over \$7.8 billion, while the projected debt limit for the same period totals approximately \$4.67 billion. **Exhibit 3** illustrates the variance between GO bond fund requests and the recommended level of new GO bond authorizations in each of the next five fiscal years.

**Exhibit 3**  
**GO Bond Requests Fiscal 2013-2017**  
**Compared to Recommended GO Bond Authorization Levels**  
**(\$ in Millions)**



GO: general obligation

Source: Department of Budget and Management

# Revenues and Taxes

## Comparative Tax and Revenue Rankings

**Based on data compiled by the U.S. Census Bureau, Maryland's overall revenue and spending levels in fiscal 2009 were moderate compared to other states. Maryland remains uniquely reliant on tax revenues, however, with strong dependence on the income tax.**

### State and Local Government Spending and Revenues

As reflected in **Exhibit 1**, total State and local government spending and revenues in Maryland are not generally high compared to other states. When comparing all states and the District of Columbia using fiscal 2009 data, Maryland ranks twenty-third and eighteenth, respectively, in total state and local government revenues and spending measured on a per-capita basis and fifty-first and forty-eighth, respectively, in revenues and spending as a percentage of personal income of residents. However, Maryland relies more on tax revenues than most states and less on nontax revenue sources.

#### **Exhibit 1 Maryland State and Local Government Spending and Revenues 2008-2009**

	<b><u>Maryland Rank Percent of Total</u></b>	<b><u>Maryland Rank Per Capita</u></b>	<b><u>Maryland Rank Percent of Personal Income</u></b>
Total Spending	n/a	18	48
Total Revenue	n/a	23	51
<b>Revenues</b>			
Taxes	3	10	34
Intergovernmental from Federal Government	31	31	45
Charges and Utilities <sup>1</sup>	45	48	50
Miscellaneous <sup>2</sup>	45	40	50

<sup>1</sup>Charges include higher education tuition, fees and auxiliary revenues, public hospital revenues, sewer and trash collection, highway tolls, and other user charges and fees. Utilities include gross receipts of publicly owned utilities (water, gas, electric, and transit).

<sup>2</sup>Miscellaneous revenues include interest earnings, net lottery revenues, liquor store revenues, rents, royalties, fines and forfeitures, special assessments, sale of property, and other.

Note: For the rankings, 1 indicates the highest and 51 the lowest.

Source: Annual Survey of Government Finance, U.S. Census Bureau (October 2011); Population from the U.S. Census Bureau (September 2011); Personal income data from U.S. Bureau of Economic Analysis (September 2011)

## **State and Local Tax Revenues Compared to Neighboring States**

**Exhibits 2 and 3** compare Maryland's State and local tax revenues in fiscal 2009 to other states in the region. Maryland's reliance on the income tax is high (second on a percentage of income basis and third on a per-capita basis) compared to other states, primarily reflecting the statewide local income tax. Maryland ranks thirty-fourth among all states in overall state and local tax revenues as a percentage of personal income and tenth in overall tax revenues on a per-capita basis. Generally, Maryland ranks in the bottom half of all states with respect to property taxes, corporate income taxes, and sales taxes measured on a percentage of income basis. Maryland ranks twenty-eighth in property taxes, eighteenth for corporate income taxes, and forty-first on sales taxes measured on a per-capita basis. These comparisons only incorporate the impact of changes made to taxes in Maryland and other states through fiscal 2009.

**Exhibit 2**  
**Maryland State and Local Tax Revenues**  
**2008-2009 Tax Revenue as a Percentage of Personal Income**  
**Comparison to Selected States**

	<b>Property Tax</b>	<b>Personal Income Tax</b>	<b>Corporate Income Tax</b>	<b>Sales and Selective Taxes <sup>(1)</sup></b>	<b>License Fees</b>	<b>Other Taxes <sup>(2)</sup></b>	<b>All Taxes</b>
Delaware							
Percent	1.8%	2.8%	0.6%	1.4%	3.4%	0.3%	10.4%
Rank	48	13	7	50	1	14	26
District of Columbia							
Percent	4.5%	2.8%	0.9%	3.3%	0.4%	0.6%	12.5%
Rank	9	14	4	34	42	8	5
<b>Maryland</b>							
<b>Percent</b>	<b>2.5%</b>	<b>3.9%</b>	<b>0.3%</b>	<b>2.5%</b>	<b>0.3%</b>	<b>0.3%</b>	<b>9.9%</b>
<b>Rank</b>	<b>41</b>	<b>2</b>	<b>31</b>	<b>44</b>	<b>44</b>	<b>15</b>	<b>34</b>
New Jersey							
Percent	5.4%	2.5%	0.6%	2.7%	0.4%	0.2%	11.7%
Rank	2	23	8	43	40	20	8
North Carolina							
Percent	2.5%	3.0%	0.3%	3.4%	0.5%	0.1%	9.8%
Rank	40	8	29	31	23	44	36
Pennsylvania							
Percent	3.1%	2.7%	0.4%	3.2%	0.6%	0.5%	10.4%
Rank	30	16	20	40	17	11	27
Virginia							
Percent	3.3%	2.7%	0.2%	2.3%	0.5%	0.2%	9.2%
Rank	24	17	41	45	30	26	44
West Virginia							
Percent	2.3%	2.7%	0.7%	4.1%	0.6%	0.7%	11.2%
Rank	43	15	5	15	16	7	11
<b>United States</b>							
<b>Average</b>	<b>3.6%</b>	<b>2.3%</b>	<b>0.4%</b>	<b>3.6%</b>	<b>0.5%</b>	<b>0.3%</b>	<b>10.7%</b>

<sup>1</sup>Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.

<sup>2</sup>Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51, except for the personal income tax (out of 44) and the corporate income tax (out of 47).

Source: Annual Survey of Government Finance, U.S. Census Bureau (October 2011); Population from the U.S. Census Bureau (September 2011); Personal income data from U.S. Bureau of Economic Analysis (September 2011)

**Exhibit 3**  
**Maryland State and Local Tax Revenues**  
**2008-2009 Tax Revenues Per Capita**  
**Comparison to Selected States**

	<b>Property Tax</b>	<b>Personal Income Tax</b>	<b>Corporate Income Tax</b>	<b>Sales and Selective Taxes <sup>(1)</sup></b>	<b>License Fees</b>	<b>Other Taxes <sup>(2)</sup></b>	<b>All Taxes</b>
Delaware							
Amount	\$709	\$1,084	\$239	\$545	\$1,322	\$133	\$4,030
Rank	44	12	8	49	1	15	22
District of Columbia							
Amount	\$3,022	\$1,901	\$579	\$2,268	\$254	\$440	\$8,465
Rank	1	2	2	4	11	5	2
<b>Maryland</b>							
<b>Amount</b>	<b>\$1,200</b>	<b>\$1,877</b>	<b>\$131</b>	<b>\$1,175</b>	<b>\$163</b>	<b>\$162</b>	<b>\$4,708</b>
<b>Rank</b>	<b>28</b>	<b>3</b>	<b>18</b>	<b>41</b>	<b>34</b>	<b>13</b>	<b>10</b>
New Jersey							
Amount	\$2,657	\$1,218	\$274	\$1,354	\$193	\$121	\$5,816
Rank	2	8	6	22	30	16	6
North Carolina							
Amount	\$861	\$1,012	\$95	\$1,175	\$184	\$23	\$3,350
Rank	39	16	31	42	31	44	37
Pennsylvania							
Amount	\$1,224	\$1,060	\$138	\$1,248	\$246	\$182	\$4,099
Rank	26	13	14	33	12	11	18
Virginia							
Amount	\$1,422	\$1,160	\$80	\$1,014	\$212	\$81	\$3,970
Rank	19	10	37	44	21	25	23
West Virginia							
Amount	\$707	\$843	\$228	\$1,270	\$196	\$224	\$3,467
Rank	45	28	9	32	27	8	35
<b>United States</b>							
<b>Average</b>	<b>\$1,382</b>	<b>\$882</b>	<b>\$150</b>	<b>\$1,413</b>	<b>\$211</b>	<b>\$106</b>	<b>\$4,144</b>

<sup>1</sup>Includes the general sales tax along with selective taxes such as excise taxes on alcohol and tobacco products, motor fuel taxes, titling taxes, admissions and amusement taxes, insurance premiums taxes, public utility gross receipts taxes, and others.

<sup>2</sup>Includes death and gift taxes, documentary and stock transfer taxes, severance taxes, and other taxes.

Note: For the rankings, 1 indicates the highest. Rankings are out of 51, except for the personal income tax (out of 44) and the corporate income tax (out of 47).

Source: Annual Survey of Government Finance, U.S. Census Bureau (October 2011); Population from the U.S. Census Bureau (September 2011); Personal income data from U.S. Bureau of Economic Analysis (September 2011)

# Revenues and Taxes

## Video Lottery Terminals – Overview

**The Video Lottery Facility Location Commission has awarded three of the five video lottery operation licenses authorized in the Maryland Constitution. Facilities in Cecil and Worcester Counties are currently operating and the Anne Arundel County facility adjacent to Arundel Mills Mall is under construction. The Location Commission is considering proposals for the remaining licenses in Allegany County and Baltimore City. Surrounding states, particularly Pennsylvania, continue to expand gambling opportunities in their states.**

## Constitutional Amendment and Implementing Legislation

During the 2007 special session, the General Assembly passed two pieces of legislation pertaining to video lottery terminal (VLT) gambling – Chapter 4 (Senate Bill 3) and Chapter 5 (House Bill 4). Chapter 5 was a constitutional amendment approved by the voters at the November 2008 general election that authorized the expansion of gambling subject to specified restrictions. The constitutional amendment provided that (1) a maximum of five VLT facility licenses may be awarded in specified areas of the State; (2) no more than one facility license may be awarded in any county or Baltimore City; (3) a maximum of 15,000 VLTs may be authorized; and (4) VLT facilities must comply with any applicable planning and zoning laws of a local jurisdiction.

Chapter 4 established the operational and regulatory framework for the VLT program. Under Chapter 4, VLT facility operation licenses are awarded by the Video Lottery Facility Location Commission (Location Commission). The State Lottery Commission oversees VLT operations and owns/leases the VLTs and a central monitor and control system. Chapter 4 allows for a maximum of 15,000 VLTs, distributed as follows: 4,750 VLTs in Anne Arundel County; 3,750 VLTs in Baltimore City; 2,500 VLTs in Worcester County; 2,500 VLTs in Cecil County; and 1,500 VLTs on State property located in the Rocky Gap State Park in Allegany County. Subsequent legislation, most notably Chapter 624 of 2010 and Chapter 240 of 2011, made a variety of clarifying and technical changes to the VLT law and also altered provisions regarding the authorized VLT facility in Allegany County, as discussed later.



## **Video Lottery Operation License Proposals**

### **Initial Submission of Proposals**

Pursuant to State law and the request for proposals (RFP) released in December 2008, initial proposals for video lottery operation licenses were required to be submitted by February 2, 2009. The Location Commission received six proposals on that date – two for Anne Arundel County and one each for the other four locations. On February 12, 2009, the commission determined that four of the six proposals met the minimum requirements of the statute and the RFP – one of the proposals for Anne Arundel County and the proposal for Allegany County were rejected by the commission for failing to meet the minimum requirements, including failing to pay the required initial license fee.

### **Award of Licenses and Initiation of VLT Operations**

In fall 2009, the Location Commission awarded three video lottery operation licenses. Penn Cecil Maryland, Inc. (Penn Cecil) was awarded a license to operate a facility with 1,500 VLTs in Perryville in Cecil County. The facility opened to the public with 1,500 VLTs on September 27, 2010. The State Lottery reports that the Perryville facility has generated \$110.6 million in revenues through September 30, 2011.

Ocean Enterprise 589, LLC (OE 589) was awarded a license to operate a facility with 800 VLTs at Ocean Downs Racetrack in Worcester County. The facility opened with 750 VLTs on January 4, 2011, and now has the full complement of 800 VLTs in place. The State Lottery reports that the Ocean Downs facility has generated \$35 million in revenues through September 30, 2011.

Power Plant Entertainment (PPE) Casino Resorts Maryland, LLC was awarded a license to operate a facility with 4,750 VLTs adjacent to Arundel Mills Mall in Anne Arundel County, contingent upon local zoning approval. County officials approved zoning legislation in December 2009, but that legislation was petitioned to a local voter referendum at the November 2010 election. On November 2, 2010, Anne Arundel County voters approved the zoning legislation, thus allowing the Arundel Mills VLT facility to go forward. Phase one of that facility is currently scheduled to open with 2,750 VLTs in June 2012, with the full complement of 4,750 VLTs in operation by October 2012.

### **Remaining Licenses to Be Awarded**

**Allegany County:** After rejecting in February 2009 the single proposal received for Allegany County, the Location Commission made several recommendations to the General Assembly related to the Allegany County location with the hope that the location could be made more attractive to potential applicants. In response, Chapter 624 was enacted in 2010, which altered several provisions regarding the Allegany County VLT facility location. Under Chapter 624, contingent upon the purchase of the Rocky Gap Lodge and Golf Resort by the

licensee, 2.5% of VLT proceeds from the Allegany County facility for the first five years of operations that would otherwise be distributed to the Racetrack Facility Renewal Account would instead be distributed to the Allegany County facility licensee. Subsequent to the enactment of Chapter 624, the Location Commission issued a new RFP for the Allegany County location in July 2010, but no proposals were received by the November 2010 deadline.

In an effort to provide further incentives for potential applicants for the Allegany County location, Chapter 240 of 2011 made several changes related to the Allegany County location, including increasing the Allegany County licensee's share of the proceeds to 50% for the first 10 years of operations. The Location Commission issued another RFP for Allegany County in June 2011 and received three proposals on September 23, 2011, one of which was subsequently rejected for failing to meet various requirements contained in the RFP.

**Baltimore City:** In December 2009, the Location Commission rejected the single proposal for Baltimore City, finding that the proposal was not in the best interest of the State. The applicant's appeal of the Location Commission's decision was denied by the State Board of Contract Appeals in December 2010 and also denied by the Baltimore City Circuit Court in June 2011; as of November 2011, the appeal is pending before the Maryland Court of Special Appeals. The Location Commission issued another RFP for the Baltimore City license in April 2011 and on September 23, 2011, the Location Commission received two proposals. However, one of the proposals was subsequently rejected by the Location Commission for failing to submit an initial license fee as required by statute and the RFP. The Location Commission plans to make final decisions on both remaining licenses by early 2012.

### **Video Lottery Terminals in Surrounding States**

Maryland's competition for gambling revenues comes primarily from three surrounding states: Delaware, Pennsylvania, and West Virginia. **Exhibit 1** shows fiscal 2011 VLT revenues for each state as well as information on the number of VLTs and facilities operating in those states. All three states have also recently authorized table games at VLT facilities, except for the bars, clubs, and fraternal organizations that are authorized to operate VLTs under West Virginia's Limited Video Lottery program.

The number of VLTs and VLT revenues generated in Pennsylvania has increased significantly since facilities began operating in late 2006. Pennsylvania generated the highest amount of gambling tax revenues of any state in fiscal 2011 (\$1.3 billion), eclipsing the next highest states (Indiana and Nevada) by over \$400 million. Pennsylvania's revenues have come partially at the expense of gambling revenues in Delaware and West Virginia, whose facilities opened in the mid-1990s, and whose revenues have decreased in total by almost one-quarter since Pennsylvania began VLT operations.

The Pennsylvania Gaming Control Board recently issued two resort licenses that allow a licensee a maximum of 600 VLTs and 50 table games. Valley Forge Convention Center, located about 20 miles northwest of Philadelphia, anticipates a spring 2012 opening. The other license, issued to Nemacolin Woodlands Resort, located about 10 miles north of Garrett County, is being

challenged by a group of investors who planned to build a resort casino near Gettysburg. The board is authorized to issue two additional casino licenses – a license to operate a stand-alone casino in Philadelphia and a casino at a new racetrack in Lawrence County in Western Pennsylvania. The board has not taken any action; however, legislation has recently been introduced to auction both licenses to applicants whose proposed facilities will provide the greatest net revenue to the state, thereby removing the geographic limitations on the licenses. A recent study commissioned by the State Treasurer identified two sites near Maryland, Chambersburg and South York, as having the highest potential net revenue impact to the state.

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**Exhibit 1**  
**Video Lottery Terminals in Maryland and Surrounding States**  
**Fiscal 2011**

<u>State</u>	<u>Locations</u>	<u>Revenue (\$ in Millions)</u>	<u>Change in Revenue</u>	<u>Win Per Day</u>	<u># of VLTs</u>
<b><i>Casinos</i></b>					
Maryland	2	\$103.1	n/a	\$201	2,300
Pennsylvania	10	2,346.2	8.4%	253	26,461
Delaware	3	499.4	-8.6%	195	6,887
West Virginia	5	734.1	-2.3%	198	9,705
<b><i>LVL</i></b>					
West Virginia	1,458	\$396.5	-0.2%	\$138	7,581

LVL: limited video lottery

VLT: video lottery terminal

Sources: Maryland State Lottery; Pennsylvania Gaming Control Board; Delaware Lottery; West Virginia Lottery

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## Revenues and Taxes

### Table Games – Overview

**While gaming revenues nationally in 2010 remain below 2008 levels, competition for gaming dollars in the Northeast gaming market is strong. While Maryland's video lottery terminal licensees are not currently authorized to have table games, video lottery terminal facilities in Delaware, Pennsylvania, and West Virginia have recently added table games. In fiscal 2011, table game revenues in those three states totaled \$783 million.**

### Trends in the Northeast Gaming Market and Surrounding States

According to a 2011 survey by the Nelson A. Rockefeller Institute of Government, nationwide gaming revenues to states declined by 2.5% in fiscal 2009 and rebounded slightly in fiscal 2010. However, gaming revenues in fiscal 2010 remained slightly below fiscal 2008 levels, as discretionary consumer spending continued to recover from the longest and deepest recession of the post World War II period. Looking for ways to offset declining tax revenues, roughly 10 states passed measures to expand state-sanctioned gaming in fiscal 2010. Among Maryland's neighboring states, Delaware, Pennsylvania, and West Virginia have all legalized table games since 2007.

Competition for gaming dollars in the northeast corridor is evident, as nearly half of the \$479 million increase in nationwide gaming revenues in fiscal 2010 is attributable to Pennsylvania gaming facilities. While New York currently permits video lottery terminals (VLTs) at nine racetrack locations, that state is considering full-fledged casino gaming as a potentially significant revenue-generating measure. As of June 2011, 43 states operate lotteries, 28 have tribal gaming, 15 authorize commercial casinos, and 12 have VLTs at racetrack facilities.

### Recent Maryland Legislation to Authorize Table Games

Legislation introduced in the 2011 session would have allowed video lottery operation licensees to offer table games such as blackjack, poker, craps, and roulette, subject to approval by voter referendum as required by the Maryland Constitution. To estimate potential revenues from table game operations at VLT facilities in Maryland, the Department of Legislative Services (DLS) examined the characteristics of 61 facilities with table games located in six states (Delaware, Illinois, Indiana, Iowa, Missouri, and Pennsylvania). For the states with at least one full year of data, total table game revenue ranged from \$114.9 million generated from 238 table games in Illinois to \$388.2 million generated from 752 table games in Indiana. The typical casino in those states had 42 table games that generated annual revenue of \$17.2 million.

For illustrative purposes only, DLS estimated the total potential table game revenue that could be generated (before any revenue distributions) from various numbers of table games awarded to VLT licensees in Maryland. Although the estimates depend on the number, distribution, and types of table games offered, DLS estimated potential fiscal 2014 gross revenues of approximately \$107 million for 200 total table games and \$192 million for 400 total table games.

## **Recent Developments in Surrounding States**

### **Delaware**

In early 2010, Delaware authorized table games for the state's three existing VLT racetrack facilities – Delaware Park, Dover Downs, and Harrington Raceway. Delaware requires 29.4% of table game revenue to be returned to the state, 4.5% of table game revenue be used to supplement horse racing purses, and the remaining 66.0% to be paid to the licensees. Delaware collects \$13.5 million in annual table game licensing fees based on the percentage of total VLT proceeds generated by each licensee. The Delaware fee structure rewards licensees for making capital improvements to their facilities; if a licensee makes qualified improvements worth \$2.5 million in a 12-month period, that licensee is permitted to reduce their annual fee by 50.0% to account for the cost of the capital project. The fees may be further reduced if Delaware's gross table game revenues meet or exceed \$80.0 million per year.

The first table games in Delaware began in May 2010. In fiscal 2011, Delaware's three facilities operated a total of 188 table games that generated \$74.1 million in total revenue, an average of \$394,173 per table game. Coinciding with the introduction of table games, the American Gaming Association's 2011 "State of the States" report noted that employment totals at Delaware's three casinos increased by 37.3% in calendar 2010.

### **Pennsylvania**

Under legislation passed in January 2010, most stand-alone VLT facilities and racetrack facilities with VLTs in Pennsylvania are authorized to have up to 250 table games. Each licensee is required to pay a one-time, \$16.5 million fee to operate table games, except that two smaller resort facility locations are limited to 50 table games per facility and must pay a \$7.5 million fee. The Pennsylvania state tax on table games is currently 14%; the rate will decline to 12% on the second anniversary of the introduction of table games at a facility. In addition to the aforementioned state tax, licensees must pay an additional 2% tax to local jurisdictions.

Pennsylvania table gaming began in July 2010; as of August 2011, there were a total of 911 table games at 10 Pennsylvania facilities. In fiscal 2011, the 10 licensed facilities operated a total of 791 table games that generated \$508.1 million in total revenue, an average of \$678,235 per table game. Fifty-six percent of Pennsylvania's total fiscal 2011 table game revenues were

concentrated among four facilities (Harrah's Chester, SugarHouse, Parx, and Sands Bethlehem) in the Philadelphia metro region. As mentioned earlier, \$235.0 million of the \$479.0 million increase in calendar 2010 nationwide gaming revenues is attributable to the Pennsylvania gaming market.

## West Virginia

In 2007, West Virginia authorized the four existing VLT racetrack facilities to offer table games, subject to voter approval via local referendum. The Greenbrier Resort became the state's fifth VLT location with table games in 2009. West Virginia imposes a \$1.5 million initial license fee for table games along with a \$2.5 million annual renewal fee. The state tax is 35% of the licensee's adjusted gross table game revenues; these revenues are distributed to horsemen's purse and bred funds, state debt reduction efforts, counties and municipalities, and programs to support home health care for senior citizens.

In fiscal 2011, the state's five licensed facilities operated a total of 350 table games that generated \$200.8 million in total revenue, an average of \$578,276 per table game. **Exhibit 1** includes a breakdown of annual gross table games revenue for each facility in West Virginia, Delaware, and Pennsylvania.

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### Exhibit 1 Table Game Revenues in Delaware, Pennsylvania, and West Virginia Fiscal 2011

<u>State/Facility</u>	<u>Number of Table Games</u>	<u>Net Proceeds</u>	<u>Average Revenue Per Table Game</u>
<b>Delaware</b>			
Delaware Park	81	\$37,613,230	\$464,361
Dover Downs	57	22,001,229	385,986
Harrington	50	14,490,064	289,801
<b>Total</b>	<b>188</b>	<b>\$74,104,523</b>	<b>\$394,173</b>
<b>Pennsylvania</b>			
Harrah's Chester	114	\$70,929,125	\$652,579
Meadows	68	32,032,157	480,272
Mohegan Sun	82	38,850,345	489,891
Mount Airy	74	37,738,361	527,314
Parx	114	90,616,757	833,714
Penn National (Hollywood)	57	34,672,240	628,963
Presque Isle Downs	48	20,053,468	425,949
The Rivers	94	57,695,791	625,786
Sands Bethlehem	98	73,121,094	782,583
SugarHouse	42	52,554,379	1,625,347
<b>Total</b>	<b>791</b>	<b>\$508,263,717</b>	<b>\$678,235</b>

**Exhibit 1 (Continued)**

<b><u>State/Facility</u></b>	<b><u>Number of Table Games</u></b>	<b><u>Net Proceeds</u></b>	<b><u>Average Revenue Per Table Game</u></b>
<b>West Virginia</b>			
Charles Town	134	\$129,739,168	\$984,384
Mountaineer	72	30,020,358	416,949
Tri-State (Mardi Gras)	60	20,442,965	340,716
Wheeling	49	14,522,045	296,368
Greenbrier	35	6,110,847	174,596
<b>Total</b>	<b>350</b>	<b>\$200,835,385</b>	<b>\$578,276</b>

Note: Totals may not add due to rounding.

Sources: Delaware Lottery; Pennsylvania Gaming Control Board; West Virginia Lottery; Department of Legislative Services

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## Personnel

### State Retirement and Pension System Investment Performance and Contribution Rates

**The pension fund's fiscal 2011 return on investments was 20%. The system's asset valuation policy smoothes gains and losses over five years. Consequently, the plan recognizes only a small portion of the gains. The plan's funded status declined to 63%, compared to 64% at the end of fiscal 2010. To improve the system's funded status, the legislature adopted pension reform in 2011. The reforms include increasing member contributions, reducing the multiplier for some new hires, and linking cost-of-living increases to investment earnings. These reforms are projected to achieve 80% funding in fiscal 2023, three years earlier than it otherwise would have.**

The State Retirement and Pension System (SRPS) serves more than 370,000 active members, former members, and retirees employed by or retired from State and local government agencies and school systems. The average annual benefit payment to retirees is approximately \$20,500, with fiscal 2011 benefit payments totaling \$2.6 billion.

### Investment Returns Far Exceed Actuarial Target, but Prior Losses Linger

SRPS investments returned 20.0% for the year ending June 30, 2011, the second consecutive year that investment returns far exceeded the system's 7.75% target. As with the prior year, the strong performance was driven primarily by the recovery of domestic and international public equity markets from their collapse in 2007 and 2008, although other asset classes, most notably private equity and real estate, also performed well. The system's public equity holdings, which made up slightly less than half of the portfolio as of June 30, 2011, earned 28.8% for the fiscal year. Private equity, comprising 4.3% of total holdings, returned 24.5% for the year. Real estate, making up 5.8% of the portfolio, rebounded from a prolonged downturn in real estate values and returned 23.3%. However, the pension fund's annual return slightly underperformed its plan benchmark by 12 basis points.

Despite the two consecutive years of strong performance, the smoothing of investment losses from fiscal 2008 and 2009 continues to exert upward pressure on State contribution rates. To mitigate the effects of volatile financial markets on contribution rates, SRPS recognizes annual investment gains and losses over five years, so only a portion of the gains from fiscal 2010 and 2011 is included in the calculation of fiscal 2013 contribution rates, while significant losses from prior years are still being recognized. The system's actuary advises that the smoothed investment return lags the actuarial target, thereby contributing a modest increase of 0.23% in State contribution rates from fiscal 2011 to 2012.



## **Pension Reform Lowers Contribution Rates**

Pension reforms enacted as part of Chapter 397 of 2011 yielded significant decreases in State contribution rates. Chapter 397 restructured pension benefits for most SRPS members but did not affect benefits paid to individuals who retired prior to July 1, 2011. The most significant changes to the benefit structure for current and future members included:

- increasing member contributions for all current and future members of the Teachers' Pension System (TPS), Employees' Pension System (EPS), and Law Enforcement Officers' Pension System (LEOPS);
- linking retiree cost-of-living adjustments for service earned after June 30, 2011, to annual SRPS investment returns (this did not affect members of the Judges' Retirement System or the Legislative Pension Plan); and
- increasing vesting and retirement eligibility requirements and lowering the benefit multiplier for TPS and EPS members hired after June 30, 2011.

Together, these reforms lowered fiscal 2013 State contribution rates from what they would have been in the absence of the enacted pension reform. For fiscal 2013, the aggregate State contribution rate would have been 17.02% in the absence of pension reform, but instead was 13.85% with the reforms, a difference of 3.17 percentage points. **Exhibit 1** shows this difference as well as the corresponding reductions in contribution rates for each plan within SRPS. The Judges' Retirement System was not affected by Chapter 397, and therefore did not experience any decline in its contribution rate.

**Exhibit 1**  
**State Pension Contribution Rates**  
**Fiscal 2012 and 2013**

FY 2012			FY 2013		
<u>Plan</u>	<u>Rate</u>	<u>\$ in Millions*</u>	<u>Rate Absent Reform</u>	<u>Rate With Reform</u>	<u>\$ in Millions*</u>
Teachers	15.45%	\$919	16.57%	13.29%	\$982
Employees	13.40%	405	15.16%	12.29%	447
State Police	61.01%	52	66.68%	61.21%	51
Judges	60.37%	25	61.18%	61.18%	25
LEOPS	47.67%	41	52.23%	46.81%	44
<b>Aggregate</b>	<b>15.67%</b>	<b>\$1,442</b>	<b>17.02%</b>	<b>13.85%</b>	<b>\$1,549</b>

LEOPS: Law Enforcement Officers' Pension System

\*Dollar contributions for fiscal 2012 and 2013 reflect the pension financing provisions of Chapter 397 of 2011.

Note: Contribution rates reflect State funds only, excluding municipal contributions.

Source: Gabriel, Roeder, Smith & Co.

## Dollar Contributions Increase Due to Pension Financing Provisions

Despite the reduction in State contribution rates shown in Exhibit 1, additional provisions in Chapter 397 that were designed to accelerate the reduction in the system's unfunded liabilities resulted in State payments to the pension fund increasing. However, the amount by which State payments increased was less than it would have been in the absence of reform.

At the time that Chapter 397 was enacted, the system's actuarial liability for State members was approximately \$50.3 billion, and the actuarial value of State assets was \$31.9 billion, leaving an unfunded liability of \$18.4 billion, or a 63.4% actuarial funding ratio. Most pension experts agree that an 80% funding level is adequate to meet future obligations, but the State was not projected to reach that level until 2026. Chapter 397 established a goal that the State should achieve 80% funding within 10 years, or by fiscal 2023. To accomplish that objective, it required that a portion of the savings generated by the benefit restructuring be reinvested in the pension fund to pay down the unfunded liabilities. Based on statutory requirements, the amount of reinvested savings is projected to be \$190.8 million in fiscal 2013; in each successive year, statute caps the reinvested amount at \$300.0 million.

The dollar contributions for fiscal 2013 shown in Exhibit 1 reflect both the base contributions generated by the contribution rates and the additional \$190.8 million in reinvested savings. As a result, total State contributions actually increase by \$107.0 million over fiscal 2012 contributions. However, had the General Assembly not passed pension reform, the State's contribution for fiscal 2013 was projected to increase by \$229.0 million over fiscal 2012 levels, a savings of approximately \$122.0 million. Moreover, the State's contributions are now projected to bring the system to 80% funding three years earlier than it otherwise would have.

# Personnel

## State Workforce and Payroll

**Since fiscal 2002, the number of State positions has decreased from 81,113 to 79,108. Declines in State agency positions were offset by increases in higher education, judicial, and legislative positions. Personnel costs increased by 45% from fiscal 2002 to 2012. Salary costs increased 34%, budgeted State health care subsidies increased 99%, and retirement contributions increased 151%.**

### Budgeted Regular Positions

Regular full-time equivalent (FTE) positions are requested by the Administration and authorized by the General Assembly when the State budget is passed. Section 38 of the fiscal 2012 budget bill limits position growth above that level by allowing the Board of Public Works to authorize no more than 100 additional positions during the 2012 fiscal year, outside of exempted provisions for hardship, manpower statutes, block grants, new facilities, and/or emergencies. The total does not include higher education institutions, the Maryland Aviation Administration, and the Maryland Port Administration

Budget spending limits, position caps restricting growth, attrition, and abolitions prompted by budgetary constraints have decreased the nonhigher education Executive Branch workforce from 55,980 FTE positions in fiscal 2002 to 50,434 in the fiscal 2012 legislative appropriation. Additionally, yet to be included in this tally are these agencies' share of a reduction required by Section 47 of the fiscal 2012 budget bill that instructed the Governor to abolish 450 positions by January 1, 2012. The distribution by agency of these abolitions has yet to be determined, but Executive Branch agencies and higher education institutions will participate in this reduction in force.

**Exhibit 1** shows that three major agencies represent two-thirds of the net decrease: the Department of Human Resources, the Department of Health and Mental Hygiene, and the Maryland Department of Transportation. These reductions, however, have been offset by new positions created in higher education institutions, the Judicial Branch, and legal agencies (primarily, the Office of the Public Defender).

**Exhibit 1**  
**Regular Full-time Equivalent Position Changes**  
**Fiscal 2002 Actual to Fiscal 2012 Legislative Appropriation**

<b><u>Department/Service Area</u></b>	<b><u>2002 Actual</u></b>	<b><u>2012 Legislative Appropriation</u></b>	<b><u>2002-2012 Change</u></b>
<b>Health and Human Services</b>			
Health and Mental Hygiene	8,555	6,411	-2,143
Human Resources	7,364	6,568	-796
Juvenile Services	2,123	2,184	61
<b>Subtotal</b>	<b>18,041</b>	<b>15,163</b>	<b>-2,878</b>
<b>Public Safety</b>			
Public Safety and Correctional Services	11,663	11,168	-494
Police and Fire Marshal	2,590	2,395	-195
<b>Subtotal</b>	<b>14,252</b>	<b>13,563</b>	<b>-689</b>
<b>Transportation</b>	9,538	8,806	-732
<b>Other Executive</b>			
Legal (Excluding Judiciary)	1,364	1,444	80
Executive and Administrative Control	1,603	1,580	-23
Financial and Revenue Administration	2,151	1,972	-179
Budget and Management	517	423	-94
Retirement	194	202	9
General Services	793	586	-207
Natural Resources	1,618	1,271	-347
Agriculture	480	399	-82
Labor, Licensing, and Regulation	1,706	1,655	-51
MSDE and Other Education	1,956	1,902	-54
Housing and Community Development	416	305	-111
Business and Economic Development	324	228	-96
Environment	1,028	937	-91
<b>Subtotal</b>	<b>14,149</b>	<b>12,902</b>	<b>-1,247</b>
<b>Executive Branch Subtotal</b>	<b>55,980</b>	<b>50,434</b>	<b>-5,546</b>
<i>Fiscal 2012 Budget Bill Section 47 Reduction*</i>	-	-450	-450

**Exhibit 1 (Continued)**

<u>Department/Service Area</u>	<u>2002 Actual</u>	<u>2012 Legislative Appropriation</u>	<u>2002-2012 Change</u>
<b>Higher Education**</b>	21,393	24,795	3,403
<b>Judiciary</b>	3,010	3,581	572
<b>Legislature</b>	730	747	17
<b>Grand Total</b>	<b>81,113</b>	<b>79,108</b>	<b>-2,005</b>

MSDE: Maryland State Department of Education

\*The General Assembly instructed the Governor to abolish 450.0 positions across the Executive Branch and higher education institutions by January 1, 2012, but the distribution by agency of these positions has yet to be determined. Numbers may not sum due to rounding.

\*\*The fiscal 2012 legislative appropriation includes 570.68 positions created by the higher education institutions through “flex” personnel autonomy.

Source: Department of Budget and Management; Department of Legislative Services

**Higher Education**

Chapters 239 and 273 of 2004 provide the University System of Maryland (USM) and Morgan State University with autonomy from the General Assembly to establish staffing levels absent specific legislative constraints, as did Chapter 401 of 2003 for St. Mary’s College. By the end of October 2011, the fiscal 2012 impact of these laws was the addition of 571 FTE positions to higher education facilities, all of which originated in USM.

**Regular Position Compensation Expenditures**

The budgeted expenditure for salaries totals \$4.65 billion in fiscal 2012, a 34.4% total increase from the actual level of salaries in fiscal 2002, as is shown in **Exhibit 2**. Yet, the cost of fringe benefits continues to grow at a much greater pace than that of salaries. The State subsidy for employee and retiree health insurance was the fringe benefit area posting the largest absolute growth since fiscal 2002, as it has increased by \$483.1 million, or 99.3%. Several years of double-digit percent increases on the cost side and the exhaustion of previously held balances caused the majority of this growth.

**Exhibit 2**  
**Regular Employee Compensation**  
**Fiscal 2002 Actual to 2012 Legislative Appropriation**  
**(\$ in Millions)**

	<b><u>Actual 2002</u></b>	<b><u>Legislative Appropriation 2012</u></b>	<b><u>\$ Change 2002 to 2012</u></b>	<b><u>% Change 2002 to 2012</u></b>
<b>Earnings</b>				
Salary	\$3,458.0	\$4,645.9	\$1,188.0	34.36%
Other Earnings	113.2	116.9	3.7	3.31%
<b><i>Earnings Subtotal</i></b>	<b>\$3,571.1</b>	<b>\$4,762.9</b>	<b>\$1,191.7</b>	
<b>Other Compensation</b>				
Health	\$486.7	\$969.8	\$483.1	99.28%
Retirement/Pensions	239.9	603.4	363.5	151.53%
Salary-dependent Fringe	258.6	350.6	92.1	35.60%
Agency-related Fringe	99.5	89.7	-9.8	-9.84%
<b><i>Other Compensation Subtotal</i></b>	<b>\$1,084.7</b>	<b>\$2,013.6</b>	<b>\$928.9</b>	
<b>Total Compensation</b>	<b>\$4,655.8</b>	<b>\$6,776.5</b>	<b>\$2,120.7</b>	<b>45.55%</b>

Other Earnings: Overtime and Shift Differentials

Health: Employee and Retiree Health Insurance

Retirement/Pensions: All Pension/Retirement Systems

Salary-dependent Fringe: Social Security and Unemployment Compensation

Agency-related Fringe: Other Post Employment Benefits, Deferred Compensation Match, Workers' Compensation, and Tuition Waivers

Source: Department of Budget and Management; Department of Legislative Services.

Retirement contributions made by the State have grown by 151.5% since fiscal 2002, making it the area of employee compensation with the largest percent increase over the time period. The increase is primarily due to investment losses that raise the required employer contribution level and enhancements enacted in 2006 that raised the benefit multiplier. In light of these accelerating long-term liabilities and their concomitant current expenditure requirements, pension reform enacted in the 2011 session made significant changes to the benefit structure and funding mechanism of the pension system. For more detail on the status of the pension system, see the Pension Performance Issue Paper.

## Education

### State Aid for Education Will Continue Its Constrained Growth

**State aid for primary and secondary education is expected to increase by \$148.5 million in fiscal 2013 to a total of \$5.9 billion, although the increase in general fund spending will exceed \$230 million due to the use of one-time funding measures to support fiscal 2012 aid. Direct aid is expected to rise by \$89.1 million, a 1.8% increase, while retirement payments on behalf of local school employees are projected to increase by \$59.4 million, a 7.1% growth rate. The final report from the Public Employees' and Retirees' Benefit Sustainability Commission reiterates a recommendation from its earlier report that a portion of teacher pension costs be shifted to local school systems over a short phase-in period to improve the long-term sustainability of the pension system.**

### Education Aid Projected to Increase by \$148.5 Million

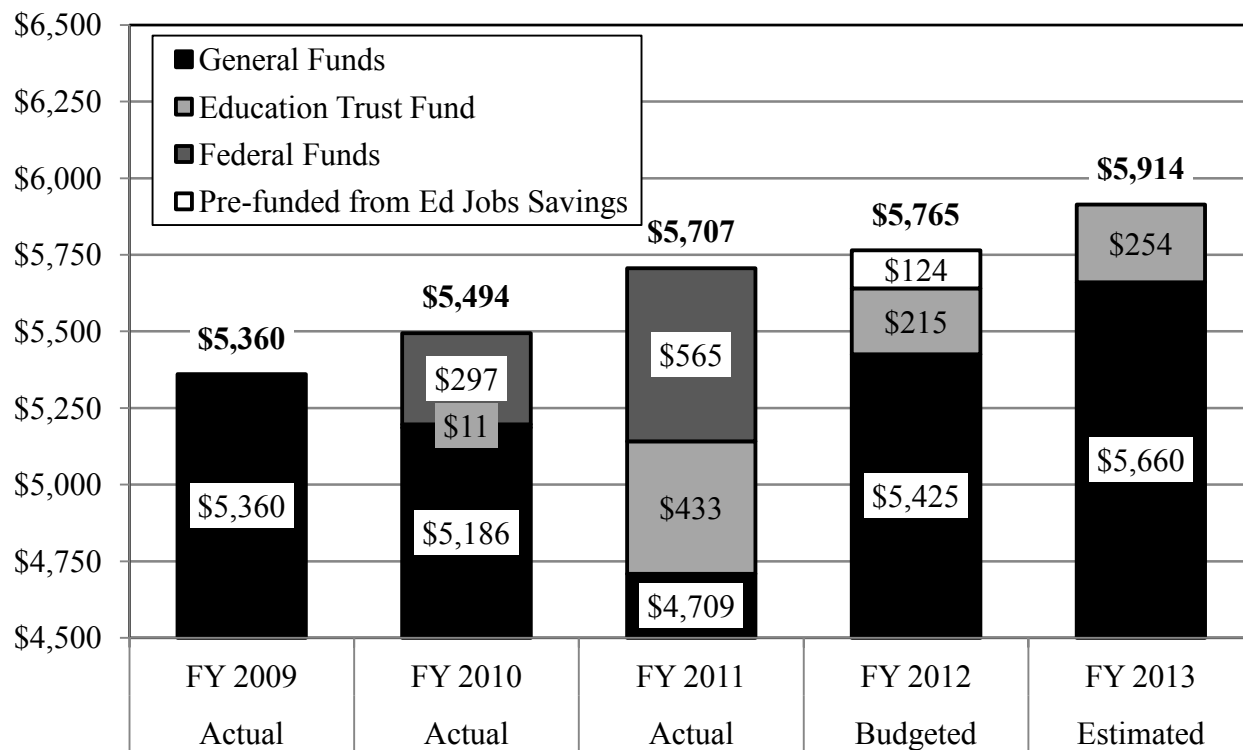
Public schools could receive an estimated \$5.9 billion in fiscal 2013, representing a \$148.5 million (2.6%) increase over 2012. Teachers' retirement payments, which are made by the State on behalf of local school systems, are expected to represent 40.0% of the increase. Aid that flows directly to local school systems is projected to grow by \$89.1 million (1.8%). This increase is driven by an expected rise in the per pupil foundation amount and projected increases in enrollment counts.

### Funding for Education Complicated by Multiple Funding Streams

As shown in **Exhibit 1**, funding State education aid has become increasingly complex since fiscal 2009, when aid was supported exclusively with general funds. Over this period, licensing and gaming revenues from video lottery terminals (some of which are placed in the Education Trust Fund), temporary federal stimulus and Education Jobs Act funds, and a one-time fiscal 2011 transfer from the local income tax reserve account were introduced as funding sources for education aid, allowing appropriations for education to increase despite the difficult economic climate. Fiscal 2012 education formulas are also being supported with \$124.4 million in general fund savings resulting from the enactment of the federal Education Jobs Act. In fall 2010, Maryland received \$178.9 million from the Education Jobs Fund to save or create education jobs during the 2010-2011 school year. After spending \$35.7 million on one-time bonus funds for the school systems, \$18.4 million to backfill for a shortfall in Education Trust Fund revenues, and \$350,000 for administrative expenses associated with the grant, the remaining \$124.4 million in federal funds replaced general funds that had been appropriated for State education aid. The \$124.4 million remained in the fiscal 2011 State budget and was disbursed to school systems in June 2011 as the initial payment toward their fiscal 2012 State aid calculations.



**Exhibit 1**  
**State Education Aid by Funding Source**  
(\$ in Millions)



Notes: Chart excludes funding for the Aging Schools Program and Technology in Maryland Schools (TIMS) program. Fiscal 2011 Education Trust Fund spending includes \$350 million transferred from the local income tax reserve account.

Due in part to the use of the one-time savings to prefund fiscal 2012 aid, general fund support for education is expected to increase by more than \$230 million in fiscal 2013, while special funds from the Education Trust Fund increase \$39.7 million over the budgeted fiscal 2012 amount. Although not shown in Exhibit 1, a fiscal 2012 general fund deficiency of \$114.2 million may be needed to backfill an anticipated shortfall in Education Trust Fund revenues.

### Foundation and Most Other Direct Aid Programs Will Increase Slightly

The foundation program is projected to total \$2.8 billion in fiscal 2013, an increase of \$36.3 million (1.3%) over fiscal 2012, as shown in **Exhibit 2**. The per pupil foundation amount is estimated at \$6,761, a 1.0% increase from fiscal 2012 and the first increase since fiscal 2008. Inflation was frozen in fiscal 2009 and 2010 by Chapter 2 of the 2007 special session, inflation

levels were negative in fiscal 2011, and the per pupil amount was level funded in fiscal 2012 through actions in the Budget Reconciliation and Financing Act (BRFA) of 2011 (Chapter 397). The 2010 BRFA (Chapter 484) further limits increases in the per pupil foundation amount to 1.0% for fiscal 2013 through 2015. The per pupil foundation amount is an important factor in determining State education aid because it is used in five of the larger State aid formulas (the foundation program; geographic cost of education index; and the compensatory education, special education, and limited English proficiency formulas) that together account for more than three-quarters of total education aid. Limiting inflation constrains growth in State education aid.

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**Exhibit 2**  
**Estimated State Aid for Education**  
**Fiscal 2012 and 2013**  
**(\$ in Thousands)**

<b><u>Program</u></b>	<b><u>FY 2012</u></b>	<b><u>Estimated FY 2013</u></b>	<b><u>\$ Change</u></b>	<b><u>% Change</u></b>
Foundation Program	\$2,773,084	\$2,809,350	\$36,266	1.3%
Geographic Cost Adjustment	127,328	128,746	1,418	1.1%
Supplemental Grant	46,496	46,496	0	0.0%
Comp Ed Program	1,083,838	1,113,012	29,174	2.7%
Special Ed Formula	264,260	267,990	3,730	1.4%
Nonpublic Placements	112,770	116,001	3,230	2.9%
Limited English Proficiency	162,699	178,266	15,567	9.6%
Guaranteed Tax Base	50,064	47,215	-2,848	-5.7%
Student Transportation	248,243	251,585	3,342	1.3%
Other	72,912	72,120	-792	-1.1%
<b>Direct Aid Subtotal</b>	<b>\$4,941,695</b>	<b>\$5,030,782</b>	<b>\$89,087</b>	<b>1.8%</b>
Teachers' Retirement	832,978	892,347	59,369	7.1%
<b>Total</b>	<b>\$5,774,673</b>	<b>\$5,923,129</b>	<b>\$148,456</b>	<b>2.6%</b>

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After the foundation program, the compensatory aid and limited English proficiency formulas are projected to have the largest dollar increases in fiscal 2013 among the direct aid programs. A portion of the increases is due to projected enrollment growth, and the rest of the increases can be attributed to the increase in the per pupil foundation amount. The compensatory aid program is expected to reach \$1.1 billion in fiscal 2013, representing a \$29.2 million (2.7%) increase. This program provides additional funding to local school systems based on enrollment of students eligible for free and reduced price meals. The limited English proficiency program provides additional resources based on local school system counts of English language learners and is expected to increase by \$15.6 million (9.6%) to \$178.3 million.

Offsetting increases in other direct aid programs, the guaranteed tax base program is projected to decline by \$2.8 million (5.7%). This program provides State funding to local school

systems in jurisdictions that have less than 80.0% of statewide wealth per pupil. Nine local school systems are expected to receive grants in fiscal 2013. Funding for the guaranteed tax base program has been decreasing in recent years because local wealth disparities, which tend to be less pronounced when the economy is bad, have declined.

## **Growth in Retirement Costs Continues Despite 2011 Pension Reform**

State retirement costs for public school teachers and other professional school personnel will total an estimated \$892.3 million in fiscal 2013, a \$59.4 million (7.1%) increase from fiscal 2012. Pension reform enacted through the 2011 BRFA (Chapter 397) altered the benefit structure for teachers and other professional school system employees (along with the benefits provided to State employees) in order to decrease costs and reduce the long-term liabilities of the State Retirement and Pension System (SRPS). Although the changes allow the State to recognize \$90.1 million in savings for local school employee pensions in fiscal 2012, these costs will continue to rise from the lower base amount.

Pension reform was undertaken following a January 2011 report from the Public Employees' and Retirees' Benefits Sustainability Commission, which noted the "considerable fiscal challenges" faced by SRPS and recommended the implementation of several reforms to improve the system's financial viability. In its July 2011 final report, following the enactment of the 2011 BRFA pension reforms, the commission commended the "meaningful and necessary steps" taken by the Governor and General Assembly to improve the position of SRPS. However, the commission also suggested that additional measures may be necessary to further solidify SRPS, most notably implementation of cost-sharing for local school employee pensions.

The commission's January and July reports recommend a local cost-sharing methodology that eventually would have the State and local school boards share equally in combined Social Security and pension costs for eligible school employees. The school systems currently pay Social Security costs (which generally equate to 7.65% of the salary base), so the State would match that contribution through appropriations to the pension fund. Any pension costs above the State match would then be shared 50/50 with the local boards of education. The total amount shifted to local boards would equal an estimated \$226.3 million in fiscal 2013; however, the commission recognized that a three- to five-year phase-in of the shift would be necessary to minimize classroom impact and give local boards of education time to adjust their budgets. In addition, the commission recommended that differences in local tax capacity be considered as part of any cost-sharing arrangement.

## Education

### Local Funding for Public Schools Continues to Challenge the Maintenance of Effort Law

With county budgets being adversely affected by the economic downturn, the State's maintenance of effort (MOE) law, which governs minimum county funding for public schools and provides for imposition of a penalty on counties that do not meet the requirement, has faced increased scrutiny in recent years. In fiscal 2012, up to seven counties may fall short of their MOE obligations and, perhaps more significantly, may "rebase" their future minimum funding requirements at lower levels.

#### Maintenance of Effort

The statutory provision that is generally referred to as the maintenance of effort (MOE) requirement was established in 1984 and requires that, on a per pupil basis, each county government (including Baltimore City) provide at least as much funding for the local school system as was provided in the prior fiscal year. If a county does not comply with the MOE requirement, then any increase in State funding for the foundation program is withheld. In 1996 the law was amended to establish a process by which a county may apply to the State Board of Education for a one-year waiver of the requirement. A waiver is granted if the State board determines through the evaluation of several factors that "the county's fiscal condition significantly impedes the county's ability to fund the maintenance of effort requirement."

The waiver provision was not used until spring 2009, when three county governments (Montgomery, Prince George's, and Wicomico) requested a waiver from MOE for fiscal 2010. The State board denied all three requests primarily because it determined that the counties did not experience a fiscal downturn that was worse than the other 21 counties. In the subsequent year, Montgomery and Wicomico counties again requested waivers, this time from their fiscal 2011 MOE amounts. The State board granted the fiscal 2011 waivers, at least in part because the State board took into consideration the additional factors in Senate Bill 310 of 2010, which did not get a final vote on *Sine Die*, although the conference committee report was signed. The conference committee agreed on changes to the MOE law that would have added factors for the State board to consider when evaluating a waiver request, including a broad economic downturn. For a more detailed discussion of prior waiver requests and decisions, see *Issue Papers – 2011 Session* and *Issue Papers – 2010 Session*.

#### Changes to MOE Law During 2011 Session

During the 2011 legislative session, two changes were made to the MOE law. The first change delays the imposition of a penalty for not meeting MOE for one fiscal year. Although to date no State penalty has been imposed for not meeting MOE, this change prevents the so called

“double penalty” that would occur if a local school system were to experience a decline in local and State funding in the same year.

The other change clarified a county’s minimum funding requirement as being the local share of the foundation program. The local share, which has been required by State law since 1916, represents a uniform percentage of each county’s tax base that must be spent in support of education each year. In every county, it is a lower amount than the MOE amount. The change was prompted by a Montgomery County Board of Education request to the State board to rule that a county council cannot reduce a school system’s budget below MOE. With the advice of the Office of the Attorney General, the General Assembly passed legislation to clarify that the law allows a county to reduce a school system’s budget below MOE but not below the local share. However, in a declaratory ruling shortly after the 2011 legislative session, the State board found that even with the clarification to the law, a county is still required to provide the full MOE amount and is subject to penalty if MOE is not met.

## **Local Funding for Fiscal 2012**

In spring 2011, six counties initially indicated they would request MOE waivers for fiscal 2012, but all of the requests were withdrawn after the State board’s declaratory ruling. In addition to questions about the required MOE amount, the State board was also asked whether a county must file a waiver request if it may not meet MOE. The State board determined that “on its face [the law] does not create a legal obligation on the county government to file a waiver request.” Preliminary budget information from the local school systems indicates that the seven counties shown in **Exhibit 1** may not meet the MOE requirement. All other counties are expected to meet or exceed the MOE requirement. Also shown in the exhibit is the amount of the penalty for these counties. Due to changes in enrollment and flat per pupil funding provided by the State in fiscal 2012, four of the counties that may not make MOE would not be subject to an MOE penalty. Therefore, there are no consequences for these counties if they are found to have fallen short of their fiscal 2012 MOE obligations. The Maryland State Department of Education certifies local funding for public schools each year, typically in January or February.

By not applying for MOE waivers, counties that do not meet MOE will “rebase” their required MOE amounts at lower levels for fiscal 2013. The MOE law states that when a county is granted a waiver by the State board, the following year’s MOE amount is the higher of the two prior years, thus preventing rebasing. However, the law does not contemplate what happens when a county does not ask for or does not receive a waiver, and then fails to meet the MOE requirement. Since the law is silent as to these scenarios, the general MOE rule governs, meaning the county must provide at least as much per pupil funding as it provided in the previous year. This allows the county to lower its future MOE obligations by reducing its support for the local school systems below the MOE amount without seeking a waiver.

**Exhibit 1**  
**MOE and Local Share of the Foundation Formula**  
**Fiscal 2012**  
**(\$ in Millions)**

<b><u>County</u></b>	<b><u>Local Share</u></b>	<b><u>Additional MOE Amount</u></b>	<b><u>Total Funding Required</u></b>	<b><u>Budgeted Funding</u></b>	<b><u>Difference</u></b>	<b><u>Potential FY 2013 Penalty</u></b>
Anne Arundel	\$306.3	\$261.8	\$568.1	\$556.1	-\$12.0	\$3.8
Dorchester	11.9	5.3	17.2	16.5	-0.8	0
Kent	10.6	6.4	16.9	16.1	-0.8	0
Montgomery	649.5	929.9	1,579.4	1,370.1	-209.3	26.2
Queen Anne's	29.4	18.6	48.0	43.5	-4.5	0.5
Talbot	31.6	2.6	34.2	32.4	-1.8	0
Wicomico	28.6	21.5	50.1	36.2	-13.9	0

Notes: Fiscal 2012 budgeted funding data is self reported by the local school systems and has not been certified by the Maryland State Department of Education. The potential penalty indicates the increase in State education aid that would be withheld if a county does not meet the MOE requirement. Any penalties for not meeting the fiscal 2012 MOE amount will be assessed in fiscal 2013.

Source: School system operating budgets as reported to the Public School Superintendent Association of Maryland; Maryland State Department of Education; Department of Legislative Services

## Policy Issues

The possibility of several counties rebasing their required MOE amount in fiscal 2013 and the State board's ruling have raised several policy issues that the General Assembly may wish to address in the upcoming session, including whether:

- to prohibit or limit the counties' ability to rebase the required MOE amount;
- to require counties to request a waiver from the State board if MOE may not be met;
- to consider altering the assessment of the penalty if MOE is not met; and
- to codify the MOE process and factors that were agreed upon in the 2010 conference committee report but have not been adopted.



## Education

### Race to the Top Prompts Redesign of State's Educator Evaluation Systems

**The Maryland Council for Educator Effectiveness, which the Governor established to recommend new performance evaluation systems for school-level educators, released its initial recommendations in June 2011. The group endorsed frameworks for evaluations of teachers and principals, and seven school systems are testing the frameworks in the 2011-2012 school year in preparation for implementation by all systems next year. Redesigning evaluation systems was a major component of Maryland's successful application for federal Race to the Top funds, and a portion of the federal funds will be used to put the revamped systems and processes in place.**

#### Maryland Council for Educator Effectiveness

Maryland was awarded a \$250 million federal Race to the Top (RTTT) grant in August 2010. Initially approved in the American Recovery and Reinvestment Act of 2009, RTTT funds are awarded to states competitively to encourage specific educational reforms that include improving instruction, especially in low-performing schools. Competition for RTTT funds spurred legislative reforms around the country, including changes to educator evaluation procedures that require school systems to link the evaluations with student growth measures. Maryland followed suit with the passage of the Education Reform Act of 2010 (Chapter 189). The Act requires the State Board of Education to adopt regulations establishing general standards for performance evaluations of certified teachers and principals and requires student growth to be a significant component in the evaluations. The redesign of teacher and principal evaluations was one of the primary reforms identified in Maryland's RTTT application.

Recommendations for the new educator evaluation systems are being developed by the Maryland Council for Educator Effectiveness (MCEE), which the Governor established by executive order on June 1, 2010. MCEE is co-chaired by the State Superintendent of Schools and the vice president of the Maryland State Education Association and is comprised of representatives of educators, school boards, the business community, State agencies, and legislators.

#### Seven School Systems Are Piloting Evaluation Systems This Year

On June 21, 2011, MCEE issued its initial recommendations for a Statewide Educator Evaluation System. The recommendations endorsed frameworks for evaluations of teachers and principals that will result in ratings of ineffective, effective, or highly effective. MCEE highlighted the importance of educator improvement as the primary goal of any evaluation, and believes that the local school systems and the State share responsibility for providing high-quality, effective, and relevant professional development. As such, the frameworks give



local school systems responsibility for defining processes for providing support to teachers and principals rated as ineffective.

Seven local school systems (Baltimore, Charles, Kent, Prince George's, Queen Anne's, and St. Mary's counties and Baltimore City) are conducting pilot performance evaluation systems during the 2011-2012 school year under the frameworks established by MCEE. These systems will select teachers at multiple grade levels and subject areas representing a broad spectrum of experience. The Maryland State Department of Education (MSDE) will provide technical assistance and professional development to teachers, principals, and their respective evaluators on the new evaluation process. Local school systems and bargaining units will enter into agreements under the frameworks between January 2012 and June 2012 so that all 24 school systems can implement new performance evaluation systems during the 2012-2013 school year.

MCEE plans to reconvene in December of this year to evaluate early implementation of the local pilots and again in June 2012 to make any recommendations based on a full year of experience in the seven pilot systems.

### **Teacher Evaluation Framework**

The framework for the evaluation of teachers has two parts, each of which constitutes 50% of the evaluation. Part one incorporates qualitative measures, including the following four observable measures: planning and preparing; instruction; classroom environment; and professional responsibilities. In addition, the framework enables local school systems to designate local priorities for which they would like to hold teachers accountable and allows school systems to establish weighting policies to indicate the percentage the system will assign to each of the qualitative measures. Part two is a quantitative component that measures student growth using State assessments, specified State measures, and specified local measures. Part two also permits the consideration of "complexity factors," such as instructional diversity, an unusually high number of transient students, and specific unusual facility issues. Complexity factors are defined as "factors recognized by the local school system that do not diminish student expectations but have an extraordinary impact on student growth."

### **Principal Evaluation Framework**

Similar to the teacher evaluation framework, the framework for principal evaluations has qualitative and quantitative measures, each of which constitutes 50% of the evaluation. The qualitative measures incorporate skills specified in the Maryland Instructional Leadership Framework: facilitate the development of a school vision; align all aspects of a school culture to student and adult learning; monitor the alignment of curriculum, instruction, and assessment; improve instructional practices through the purposeful observation and evaluation of teachers; ensure the regular integration of appropriate assessments into daily classroom instruction; use technology and multiple sources of data to improve classroom instruction; provide staff with focused, sustained, research-based professional development; and engage all community stakeholders in a shared responsibility for student and school success. Local school systems may also include local priorities for which they would like to hold principals responsible. The

quantitative student growth measures are categorically aligned with teacher evaluation measures and include local, State, and norm referenced tests, as well as local school system data points.

### **Teacher/Principal Evaluation System: State Default Model**

The Education Reform Act requires a local school system and a local bargaining unit to implement a State Board of Education model performance evaluation system if the sides are unable to mutually agree on one. The initial recommendations of MCEE include a default performance evaluation model in which evaluations are equally divided between qualitative (professional practice) and quantitative (student growth) measures, as required by the teacher and principal frameworks. The quantitative section will be divided so that 20 percent will be based on local school system student growth measures and 30 percent will be based on statewide student growth measures. MCEE will further develop the details of the default model after the 2011-2012 pilot year.

### **State Board of Education Must Adopt Evaluation Regulations**

The Education Reform Act requires the State board to adopt regulations establishing general standards for performance evaluations of certified teachers and principals. In November 2010, the Administrative, Executive, and Legislative Review Committee voted to oppose an early set of proposed regulations submitted by the board on this subject. The State board has placed the regulations on hold and will restart the process of promulgating draft regulations in June 2012, consistent with the Education Reform Act of 2010 and the RTTT application. Based on lessons learned from the pilot local evaluation systems, MSDE will develop a list of acceptable options for the components of a statewide system of evaluation. This list will guide local school systems when they draft their final evaluation systems and will provide flexibility for local school systems within the parameters ultimately established by State board regulations.

### **Race to the Top Funds Will Support Evaluation Systems and Processes**

Of the \$250 million Maryland received from RTTT for use over four years, \$125 million will be distributed to MSDE, and the participating local school systems will collectively receive the other \$125 million. MSDE will use its \$125 million from the RTTT fund to implement 54 projects specified in the State's RTTT application, including building a statewide technology infrastructure that links all data elements and redesigning the model for preparation, development, retention, and evaluation of teachers and principals. Specifically, \$2.3 million is dedicated to the technology costs associated with implementing a centralized educator evaluation system. Local school systems are likewise devoting portions of their RTTT funds to needs relating to the new evaluation process, such as data systems (including computer hardware) to link educators to State and local measures of student growth, evaluation tool design, professional development, mentoring and induction programs, and teacher and principal academies.



## Education

### School Construction Funding Exceeds the \$2 Billion Goal Ahead of Schedule

**Fiscal 2013 marks the final year of the \$250 million annual funding goal for school construction adopted in the Public School Facilities Act of 2004. In fiscal 2012, a year ahead of the deadline, the State surpassed the \$2 billion overall funding goal by \$167 million. This total includes a supplementary appropriation of \$47.5 million for public school construction projects in fiscal 2012, more than half of which has already been approved for specific school projects by the Board of Public Works. Despite the large amount of funding devoted to public school construction, local school system capital needs remain high, with fiscal 2013 requests totaling nearly \$600 million and future requests in the range of \$400 to \$550 million annually.**

### Annual Funding Goal Surpassed Again in Fiscal 2012

In 2003, at the request of the Task Force to Study Public School Facilities, the Maryland State Department of Education conducted a survey to determine the extent to which public school facilities statewide met current federal, State, and local facility standards and could support required programs and expected enrollment. The results indicated that more than one-third of public schools were deficient in at least one facility standard and that the cost of the necessary improvements was \$3.85 billion (in 2003 dollars). The task force recommended that the State assume \$2.0 billion of this cost with the remaining responsibility assigned to local governments under the State-local cost share formula for school construction. The Public School Facilities Act of 2004 (Chapters 306 and 307) declared the intent that the State pursue a goal of fully funding these school facility needs by fiscal 2013, requiring the State to provide approximately \$2.0 billion for school construction projects over eight years (fiscal 2006 to 2013) or approximately \$250.0 million per year. Since fiscal 2006, the State has invested a total of \$2.167 billion in public school construction, surpassing the overall State goal of providing \$2.0 billion within eight years set by the Public School Facilities Act of 2004, one year ahead of schedule. In fiscal 2012 public school construction received \$264.1 million from general obligation bonds (\$240.3 million) and previously authorized contingency funds (\$23.7 million).

### Supplementary Appropriations for Public School Construction

In addition, Chapter 572 of 2011 allocated \$47.5 million in supplementary appropriations for public school construction projects as one-time funds from the increase in the State sales and use tax on alcoholic beverages to 9% of the taxable price of the alcoholic beverage. The General Assembly allocated each county or region a specific sum for which local matching funds are not required. Under the Act, these projects may or may not be eligible for funding from the Public School Construction Program and must be approved by the Board of Public Works (BPW). BPW must consider requests from local jurisdictions and projects that benefit older school

buildings; benefit schools with high proportions of low-income students; can be completed in one year; eliminate or reduce the use of relocatable classrooms; are eligible for State funding but are not fully funded in fiscal 2012; or reduce energy consumption or incorporate high-performance “green” building principles. Funds may also be reserved for eligible projects in fiscal 2013, but local funding recommendations must be submitted to BPW for approval by January 31, 2012. **Exhibit 1** shows the allocation of fiscal 2012 supplementary funds by county or region.

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**Exhibit 1**  
**Supplementary School Construction Appropriation by County or Region**  
**Fiscal 2012**

<b><u>County/Region</u></b>	<b><u>Appropriation</u></b>
Anne Arundel County	\$5,000,000
Baltimore City	9,000,000
Baltimore County	7,000,000
Howard County	4,000,000
Montgomery County	9,000,000
Prince George’s County	9,000,000
Eastern Shore (Caroline, Dorchester, Kent, Queen Anne’s Somerset, Talbot, Wicomico, Worcester)	1,250,000
Northeast Maryland (Cecil, Harford)	1,250,000
Southern Maryland (Calvert, Charles, St. Mary’s)	1,250,000
Western Maryland (Allegany, Carroll, Garrett, Frederick, Washington)	750,000
<b>Total</b>	<b>\$47,500,000</b>

Source: Chapter 572 of 2011

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As of November 2, 2011, Anne Arundel, Baltimore, Howard, and Montgomery counties had submitted school construction project recommendations to BPW for review totaling \$25.0 million. Approved projects range from locker room renovations to the replacement of entire facilities (in which case supplementary funding supports only a portion of the total project cost).

## School Construction Needs Continue Despite Achievement of the 2004 Goal

The Governor and the General Assembly have met the State funding goal for school construction primarily by both reducing and delaying funds for some other State capital projects and using unspent school construction funds from prior years available in the contingency fund. The amount of available contingency funds has increased significantly in the past several years reflecting economic conditions as more projects have come in well under budget, and local governments have reduced project scopes or cancelled projects due to lack of local matching funds. In fiscal 2012, as in previous years, about one-quarter of the total general obligation debt authorization was allocated to public school construction.

The Governor's fiscal 2012 *Capital Improvement Program* proposes to continue the \$250.0 million annual funding commitment for public school construction beyond fiscal 2013. Allocating \$250.0 million for school construction in fiscal 2013 will bring total State funding to \$2.417 billion for fiscal 2006 through 2013, exceeding the \$2.0 billion overall funding goal by nearly 20%. It is important to recognize, however, that escalation in building costs since 2004 has significantly raised the actual cost of bringing all public schools up to minimum standards by fiscal 2013, the basic goal of the Public School Facilities Act. And while funding requests from local jurisdictions have declined by 9.0% annually in the last five years, school construction needs continue to exceed the anticipated level of State funding. Fiscal 2013 requests submitted to the Interagency Committee on School Construction in October total approximately \$595.5 million, with out-year requests in the range of \$400.0 million to \$550.0 million annually through 2018.



## Education

### Building Opportunities for All Students and Teachers in Maryland Tax Credit Program

Since 2006, bills to create a Building Opportunities for All Students and Teachers in Maryland Tax Credit program have been introduced annually. The legislation, which is similar to tax credit programs already operating in several other states, would create a tax credit for qualifying contributions to eligible nonprofit organizations that provide funds for specific educational purposes, including scholarships to private elementary and secondary schools. The 2011 version of the legislation was again unsuccessful, but a nine-member workgroup is further studying the proposal and will report its findings to the Governor and the General Assembly in late December.

### Recent Legislative Proposals

Legislation has been introduced in the last several sessions proposing to establish a tax credit program for certain donations to private and public schools. Most recently, Senate Bill 315/House Bill 932 of 2011 proposed to establish the Building Opportunities for All Students and Teachers (BOAST) in Maryland Tax Credit. The proposed tax credit would be for 75% of the contributions made by a business or nonprofit organization to an eligible nonprofit organization that either (1) provides scholarships to eligible students or teachers at a nonpublic K-12 school; or (2) provides grants to (a) public schools to support innovative educational programs that are not part of the regular academic program in order to achieve the goals of the Bridge to Excellence in Public Schools Act of 2002; or (b) public school teachers to assist in the cost of certification coursework. The amount of credits that the Maryland State Department of Education (MSDE) could award in each year would be limited to the amount of money appropriated by the Governor to a reserve fund established by the bill. The bill does not require the Governor to appropriate money in any fiscal year, nor does it specify an amount to be appropriated.

### Similar Programs in Other States

Eight states offer similar programs that grant tax credits for contributions to organizations that provide scholarships for children to attend private school. Other states, including Minnesota and Illinois, offer tax credits or deductions for the eligible costs of attending a private school. **Exhibit 1** shows information on the state scholarship tax credit programs, including whether individuals or businesses can qualify for the tax credit, the total annual amount of tax credits available, and the number of students receiving a scholarship under the program. The total amount of funding shown in certain states may include tax credits designated for public school education grants. State programs also vary in the value of the credit offered, scholarship



eligibility, and number of programs offered. For example, most programs restrict scholarship eligibility based on the income of the student's family and limit eligibility to students who are entering kindergarten or who previously attended a public school. Unlike most states, Florida allows scholarships to be granted to low-income students to attend a public school outside the student's school district.

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### Exhibit 1 State Scholarship Tax Credit Programs

<u>State</u>	<u>Year Enacted</u>	<u>Credit Availability</u>		<u>Funds Expended or Donated in 2010-2011 (\$ in Millions)</u>	<u>Participating Students<sup>1</sup></u>
		<u>Individuals</u>	<u>Businesses</u>		
Arizona	1997 <sup>2</sup>	X	X	\$60.6 <sup>3</sup>	31,247
Florida	2001		X	140.0	34,550
Georgia	2008	X	X	24.5 <sup>4</sup>	6,125
Indiana	2009	X	X	0.4	219
Iowa	2006	X		10.8	10,208
Oklahoma	2011	X	X	n/a <sup>5</sup>	n/a
Pennsylvania	2001		X	51.8	42,339
Rhode Island	2006		X	1.3	460

<sup>1</sup>Number of students receiving scholarships under the program in the 2010-2011 school year.

<sup>2</sup>Arizona added a corporate tax credit in 2006 and a special needs education tax credit in 2009.

<sup>3</sup>Amount shown is total tax credit claims in the 2010-2011 school year.

<sup>4</sup>Georgia has a \$50 million cap that is adjusted annually for inflation.

<sup>5</sup>Oklahoma's program will provide a maximum of \$5.0 million in tax credits annually.

Source: American Federation for Children; Florida Department of Education; National Conference of State Legislatures

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Pennsylvania's Educational Improvement Tax Credit (EITC) offers tax credits for businesses that contribute to eligible scholarship organizations at nonpublic schools or educational improvement organizations for "innovative programs" at public schools. The credit is equal to 75% of the contribution made, not to exceed \$300,000. The value of the credit can be increased to 90% of the contribution if the business agrees to provide the same amount for two consecutive tax years. For contributions to prekindergarten scholarship organizations, a business may receive a tax credit equal to 100% of the first \$10,000 contributed and up to 90% of the remaining amount contributed, for a maximum annual credit of \$150,000. Annual program funding increased from \$60.0 million to \$75.0 million in fiscal 2012.

## **BOAST Study Group**

During the 2011 interim, a nine-member workgroup, comprised of both advocates and opponents of the BOAST legislation, met to study the Maryland legislation and similar programs in other states. The study group is made up of representatives of the local superintendents, the local boards of education, the State educators association, the Maryland State Department of Education, the Maryland Department of Business and Economic Development, the Jewish community, the Catholic community, the legal and business community, and the Governor's office.

The meetings of the workgroup have focused on many aspects of the tax credit legislation, including:

- the components of the 2011 BOAST legislation (Senate Bill 315/House Bill 932) and the basis for the fiscal and policy note; how tax incentives work; and the potential for the legislation to have a local fiscal impact;
- additional details of the 2011 legislation; information on innovative educational organizations, which would be responsible for providing grants or services under the legislation; and a review of the 2011 testimony on the bill;
- the components and accountability measures of the Pennsylvania EITC program;
- tax credit programs in other states; and
- accountability requirements in Maryland public and private schools.

In addition, the Senate sponsor of the bill addressed the group to discuss the potential benefits of the tax credit program, and members of the public, both proponents and opponents, were invited to provide testimony to the workgroup at one of the meetings.

During its meetings, the group has also worked on compiling a chart of pros and cons regarding the BOAST tax credit legislation. The study group will report to the Governor and the General Assembly in late December.



# Higher Education

## University Plans Focus on College Completion and Enrollment Funding

Maryland has set a goal that at least 55% of adults will have a college degree by 2025, in support of the national goal to lead the world in college completion. In order to reach the goal, 11,000 additional associate's and bachelor's degrees must be awarded annually in Maryland. Each higher education segment has set goals that come close to reaching the statewide goal. In addition, the University System of Maryland and Morgan State University have adopted 10-year strategic plans that aim to meet their goals, primarily through enrollment funding, with a price tag of approximately \$550 million in State funding.

## United States Sets Goal to Lead the World Again

Degree completion is an important factor for national and state competitiveness in the global economy. As late as the 1980s, the United States led the world in degree completion rates. It is currently ranked twelfth. Degree completion is also important in terms of a person's employability – it is estimated that by 2018, 62% of jobs in the United States will require at least an associate's degree. That rate in Maryland is expected to grow to 66% due to its larger-than-average research and technology based industries.

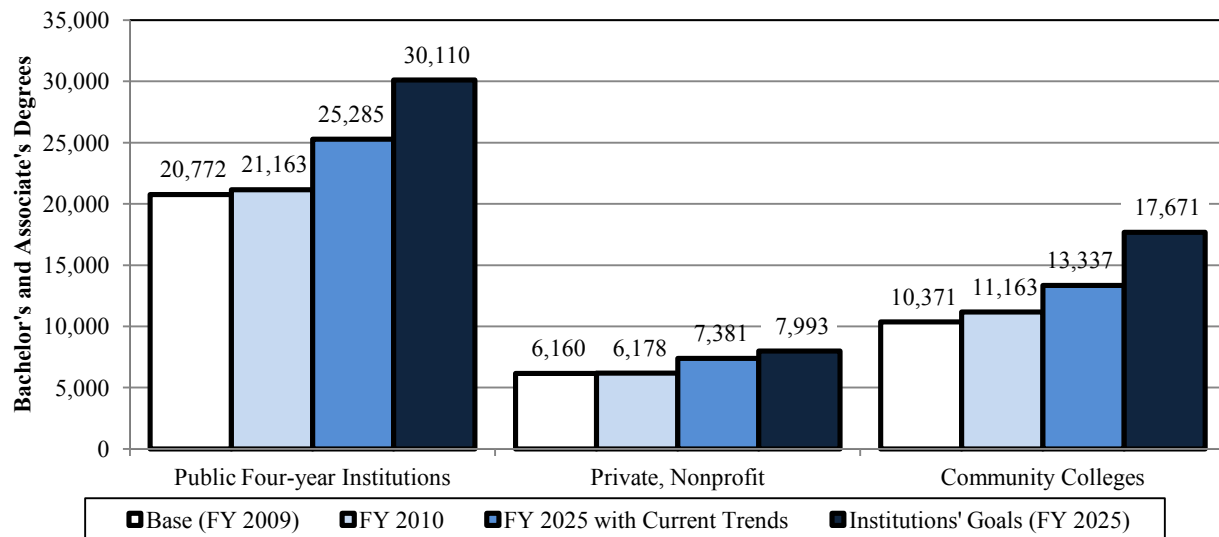
In order to keep the United States globally competitive, President Obama announced in 2009 a goal for the country to return to having the world's highest college completion rate by 2020. Following the president's lead, Governor O'Malley announced a College Completion Agenda with the goal that at least 55% of residents aged 25 to 64 hold either an associate's or bachelor's degree by 2025.

## Maryland's "55%" Initiative

Maryland's current degree attainment level is 44%, with the State's public and private nonprofit colleges and universities awarding 39,387 degrees in fiscal 2010. To achieve the 55% goal, 58,000 degrees must be awarded annually. Current trends show that about 46,900 degrees will be awarded annually by 2025, so the State's colleges must increase annual degree production by 11,100 degrees above current trends.

Each of Maryland's higher education segments has set goals toward awarding 58,000 degrees annually in 2025, as shown in **Exhibit 1**. The exhibit also shows degrees awarded in fiscal 2009, when the goal was announced; in fiscal 2010, the most recent year of data available; and projections for 2025 based on current degree production trends. In total, the segments' goals sum to 55,774 degrees, a little short of the needed 58,000 degrees.

### Exhibit 1 Progress Toward 2025 Degree Production Goal



Source: Maryland Higher Education Commission, University System of Maryland, Morgan State University, Maryland Independent College and University Association, Maryland Association of Community Colleges, Department of Legislative Services

A number of programs are underway to reach the 55% goal. One major area is in course redesign, which was first begun by the University System of Maryland in 2006 and was recently expanded with State grants from The Lumina Foundation for Education and Complete College America (CCA). Initially focused on redesigning introductory and gateway courses, campuses have achieved success increasing the retention and performance of students while also achieving cost savings. The new grant funds are focused on redesigning remedial or developmental courses, particularly math at the community colleges. To date, campuses have approached course redesign independently on a course-by-course basis. However, it would be more cost effective and beneficial to more students and campuses if “prototype” redesigned courses, particularly remedial courses, were developed and made available to all campuses. Maryland is looking into this strategy as part of its CCA grant.

Maryland is also working with CCA to track data and increase degree completion. One way to increase degree completion is to award associate’s degrees to students who have already earned them. In addition to developmental math course redesign, CCA grant funds are supporting “reverse transfer” projects in Maryland. Reverse transfer is a method to award associate’s degrees to students who transferred from a community college to a four-year institution before earning an associate’s degree but have subsequently met the minimum associate’s degree requirements while at the four-year institution.

## **New Strategic Plans Put a Price Tag on the 55% Goal**

The University System of Maryland (USM) and Morgan State University (MSU) recently completed 10-year strategic plans. USM is in the first year of implementing its plan, while MSU's plan was approved by its Board of Regents in August 2011. Both plans include initiatives designed to help the State achieve its 55% degree completion goal and cost estimates to achieve the plans primarily through enrollment growth.

USM's strategic plan calls for institutions to increase the number of undergraduate degrees conferred to 28,000 in fiscal 2021, an increase of 8,125 annually over fiscal 2010 levels. In order to achieve this goal, USM plans to grow undergraduate enrollment to 133,086 in fall 2020, an increase of 27,382 students or 26% over fiscal 2010. This is only slightly more than the Maryland Higher Education Commission's (MHEC) projected enrollment growth of 25,413 or 24% at USM over the same time period. Overall, approximately half of USM's enrollment increase is attributed to improving retention rates with new enrollments making up the other half, including new first-time students and transfers from community colleges.

USM projects enrollment to grow at all institutions, but the proportion of new and retained students will vary from campus to campus. For example, University College is projected to at least double the number of undergraduate degrees awarded annually and to increase enrollment by about one-third, suggesting that retention and graduation rates are expected to improve significantly. On the other end of the spectrum, College Park is expected to increase undergraduate degrees awarded by a modest 8% over the 10-year period, reflecting its already high retention and graduation rates. However, it is expected to increase new enrollments by 2,000 students despite its 2009 strategic plan, which calls for "right sizing" enrollment by decreasing the undergraduate student population to 25,000 students.

MSU's strategic plan calls for improved retention and degree completion. Through its efforts, MSU expects to double the number of undergraduate degrees conferred from 811 in 2011 to 1,622 in 2022. While MSU has not determined what portion of this increase will be attributable to enrollment growth and improved retention, plans are to double enrollment (including graduate students) from approximately 7,300 in fall 2011 to 12,000 to 15,000 students. Current enrollment growth is mainly due to an increase in transfer students, but MSU states that with an increase in funding it could increase the number of freshman students.

In order to meet the goals of its strategic plan, MSU suggests an additional \$150 million in State support will be needed. USM estimates it will need an additional \$350 million to support enrollment growth and other program enhancements in addition to \$443 million in current services cost increases, split roughly equally between State funding and tuition revenues. In total, approximately \$546.5 million in State funding is requested in both plans. Further, USM has stated that it can only attain the degree completion goal with the re-instatement of the enrollment funding initiative (EFI), which was used to support enrollment growth in fiscal 2007 through 2009. However, over the next 10 years USM's enrollment goals are only slightly higher than the State's official enrollment forecast from MHEC.



# Higher Education

## Legislation Allowing In-state Tuition Rates for Undocumented Immigrants Petitioned to Referendum

Senate Bill 167 passed the General Assembly and was signed into law by the Governor as Chapter 191 of 2011. However, the Act was petitioned to referendum and will be on the November 2012 ballot. If approved by the voters, qualifying students will be allowed to pay resident tuition rates based on attending and graduating from a Maryland high school, rather than on residency. Students must first enroll at a community college and, upon completion of at least 60 credits or an associate's degree, may transfer to a public four-year university. The bill was to take effect for the fall 2011 semester, but the referendum has delayed implementation until at least the spring 2012 semester.

## Federal Law Regarding Education for Undocumented Immigrants

Under *Plyler v. Doe*, a 1982 Supreme Court decision, public elementary and secondary schools are required to accept undocumented immigrants. In its decision, the court contended that denying an education to the children of undocumented immigrants would “foreclose any realistic possibility that they will contribute ... to the progress of our Nation.” However, since 1996, federal immigration law has prohibited undocumented immigrants from obtaining a postsecondary education benefit that U.S. citizens cannot obtain.

Federal legislation called the Development, Relief and Education for Alien Minors Act of 2009 – or the DREAM Act – would have created a path to citizenship for certain immigrants who entered the United States illegally when they were younger than 16 and would have allowed those students to receive in-state tuition. In December 2010, the U.S. House of Representatives passed the DREAM Act; however, in the U.S. Senate it failed to get the necessary supermajority of 60 required to force a final vote on the legislation.

## Immigrant Tuition Laws in Other States

To get around the federal law, states that have passed in-state tuition benefits for undocumented immigrants have crafted legislation that bases eligibility on where a student went to high school, not immigration status. Currently, 12 other states allow undocumented immigrants to pay in-state tuition rates at public institutions of higher education: California, Connecticut, Illinois, Kansas, Nebraska, New Mexico, New York, North Carolina (community colleges only), Rhode Island, Texas, Utah, and Washington. Two states have repealed their programs: Oklahoma in 2008, although the Board of Regents has some authority to grant in-state tuition; and Wisconsin, which recently repealed its program in the 2011-2013 state budget. Bills with similar intentions have been introduced in several other states. Four states



have enacted legislation that specifically prohibits providing in-state tuition to undocumented immigrants, with South Carolina going even farther, prohibiting students from enrolling at all.

## **Maryland's 2011 Legislation**

Chapter 191 of 2011 would allow undocumented immigrants to attend public institutions of higher education in Maryland at the same rates that resident students pay, beginning with the 2011-2012 academic year. However, as discussed further below, the legislation was petitioned to referendum following the 2011 session and has not taken effect. The legislation creates a two-tier path for undocumented students, who must begin at a Maryland community college no earlier than fall 2011, subject to several requirements and conditions. After completing at least 60 credits at a community college, qualifying students may enroll at a public four-year university and pay the equivalent of in-state tuition.

### **Community Colleges**

To qualify for the exemption from paying out-of-state tuition at a community college in the State, and out-of-county tuition if the college is supported by the county in which the student last attended or graduated from high school, a student must:

- beginning with the 2005-2006 school year, have attended a secondary (high) school in the State for at least three years;
- beginning with the 2007-2008 school year, have graduated from a high school in the State or received the equivalent of a high school diploma (*e.g.*, a general education degree) in the State;
- register as an entering student at a community college in the State no earlier than fall 2011;
- provide documentation that the student or the student's parent or legal guardian has filed a Maryland income tax return annually for the three years while the student attended high school in the State, during any period between high school graduation and registration at the community college, and during the period of attendance at the community college; and
- register at a community college within four years of high school graduation.

The bill also requires a student who qualifies for an exemption and is not a permanent resident to provide an affidavit stating that the student will file an application to become a permanent resident within 30 days after becoming eligible to do so. In addition, a student who qualifies for an exemption and is required to register with the Selective Service System must provide documentation of the required registration.

### **Four-year Institutions**

To be eligible to pay a rate equivalent to the *resident* tuition rate at a public four-year institution in the State, a student must meet all of the requirements to qualify for the community college tuition rate and:

- have attained an associate's degree or achieved 60 credits at a community college in Maryland;
- provide documentation that the student or the student's parent or legal guardian has filed a Maryland income tax return annually while the student attended a community college, during any period between graduation from or achieving 60 credits at a community college and registration at a public four-year institution, and during the period of attendance at an institution; and
- register at a public four-year institution within four years of graduating from or achieving 60 credits at a community college.

Students qualifying under the bill for tuition rates equivalent to the resident tuition rates at four-year institutions may not be counted as in-state students for the purposes of determining the number of Maryland undergraduate students enrolled at the institutions.

### **Honorably Discharged Veterans**

The bill also extends the time period after discharge from one to four years in which an honorably discharged veteran of the U.S. armed forces may qualify for an exemption from paying out-of-state tuition at a community college or public four-year institution by submitting (1) evidence that the veteran attended a high school in Maryland for at least three years; and (2) documentation that the veteran graduated from a Maryland high school or received the equivalent of a high school diploma in Maryland.

### **2011 Legislation Petitioned to Referendum**

Article XVI, Section 3 of the Maryland Constitution provides for an Act of the General Assembly to be placed on the ballot by the submission of a petition signed by 3% of the qualified voters of the State. The submission of petitions containing at least 55,736 signatures of registered voters was required in order to place an Act on the 2012 General Election ballot. Petitioners gathered a total of 156,211 valid signatures, well exceeding the number required under the Maryland Constitution to have Chapter 191 of 2011 (Senate Bill 167, Public Institutions of Higher Education – Tuition Rates – Exemption) placed on the November 2012 ballot. Therefore, implementation of its provisions is delayed until Maryland voters decide whether or not the Act will become law. If voters approve the Act, it will take effect 30 days after the election.



## Higher Education

### **Trial Date Set for Lawsuit Alleging Maryland's Failure to Dismantle Its Formerly *De Jure* System of Segregated Higher Education**

Prompted in part by a 2005 program approval decision by the Maryland Higher Education Commission, the Coalition for Equity and Excellence in Maryland Higher Education, Inc. brought suit against the State for an alleged violation of the Civil Rights Act of 1964 and the Equal Protection Clause of the U.S. Constitution. In June 2011, the U.S. District Court ordered the State and the coalition to undertake mediation in an attempt to reach a settlement; however, an October letter from the coalition to the court suggests that the two sides remain far apart. Although the parties have not officially been released from the mediation requirement, trial is set to begin in January 2012,

### **Maryland's Obligation to Public Historically Black Institutions in the State**

In 1969, the United States Office for Civil Rights (OCR) required Maryland, along with nine other states, to submit for approval by OCR a plan to remove all vestiges of its formerly segregated system of higher education. OCR asserted that Maryland and the other states had a responsibility to overcome past segregative practices and that it would not be enough to simply maintain nondiscriminatory admissions policies if the student racial demographic at an institution was still reflective of the formerly *de jure* racial identification of that institution.

Over the course of the next 30 years, Maryland submitted and resubmitted various plans to OCR in order to enhance its public historically black institutions (HBIs), which are Bowie State University, Coppin State University, Morgan State University (MSU), and the University of Maryland Eastern Shore. In December 2000, the State and OCR entered into a partnership agreement that included a commitment from the State to further enhance its four HBIs and to improve higher education opportunities for African American students. This partnership agreement expired on December 31, 2005, and on June 19, 2006, Maryland submitted a final report on the Partnership Agreement Commitments to OCR. OCR acknowledged receipt of that 2006 report in 2008, but the State has not yet been released from its obligations under the agreement. Five other states (Florida, Ohio, Oklahoma, Pennsylvania, and Texas) also continue to be subject to monitoring by OCR in this regard.

Maryland must comply with federal laws regarding unnecessary duplication of academic programs. This standard of "unnecessary duplication" was set forth by the Supreme Court in *United States v. Fordice*, 505 U.S. 717 (1992), which concerned Mississippi's efforts to desegregate its system of higher education. The court opined that a traditionally white institution (TWI) could not duplicate nonbasic bachelor's or graduate-level courses that are similar to existing courses at HBIs within close geographic proximity, unless sound educational justification exists. The Maryland Higher Education Commission (MHEC) is responsible for reviewing new academic programs proposed by higher education institutions in the State. Under

Maryland law, if an institution's objection to another institution's proposed academic program cannot be resolved, a final decision is made by MHEC, and that decision is not subject to further appeal or judicial review.

### **Lawsuit Prompted by Joint MBA Program at Towson University and University of Baltimore**

A 2005 decision by the Secretary of Higher Education authorized Towson University, a TWI, to offer a joint Masters of Business Administration (MBA) program with the University of Baltimore (UB). This decision resulted in an appeal to the full commission by MSU, which has had an MBA program for over 30 years and, like Towson and UB, is located in the Baltimore area. MSU claimed that the new MBA program would unnecessarily duplicate its program and would lead to further segregation in Baltimore-area universities. In November 2005, MHEC affirmed the Secretary's decision to allow Towson and UB to implement the new joint MBA program. MSU sought to pursue legal proceedings against the State relating to the decision authorizing the joint MBA program at Towson and UB; however, the Attorney General's Office has advised that judicial review of MHEC's decision is not permitted under current law. MSU has also supported legislative initiatives over the last six years that would have authorized judicial review of MHEC's decision; however, none of these initiatives has been successful.

Prompted in part by the MHEC decision relating to the joint MBA program at Towson and UB, on October 13, 2006, The Coalition for Equity and Excellence in Maryland Higher Education, Inc. filed suit in Baltimore City against MHEC and the State alleging violations of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution – both of which protect against being subject to discrimination on the basis of race, color, or national origin. On October 23, 2006, the case was removed to U.S. District Court. The suit is being brought by a group of plaintiffs that includes former, current, and prospective students of HBIs in the State.

### **Trial Date Set Following Summary Judgment and Court-ordered Mediation**

On June 6, 2011, the court granted the State's motion for summary judgment in part by ruling that a genuine dispute of material fact did not exist relating to capital budget funding and its traceability to the prior *de jure* system. However, that same order also denied the rest of the State's motion for summary judgment, and the coalition's claims relating to operational budget funding, program duplication, and mission statement policies and practices will proceed to trial. Specifically, the coalition argued that the present capital budget funding, operational budget funding, program duplication, and mission statement policies and practices in the State are traceable to the *de jure* system of segregation and continue to have a discriminatory effect on HBIs in the State. Since the summary judgment ruling, the coalition has pleaded that the capital budget funding issue (relating to the physical condition and/or quality of buildings, equipment, and other physical facilities) should proceed to trial along with the plaintiffs' other claims. A

response from the court may be forthcoming; however, the Attorney General's Office notes that as a general rule, the court does not typically reverse itself on an order for summary judgment.

On June 27, 2011, a little over a week before trial was set to commence, the court ordered the coalition and the State to undertake mediation, in good faith, to attempt to reach a settlement. The court noted that it would be unrealistic both to prepare for trial and to devote the time and resources that would be necessary to achieve settlement. Therefore, the court postponed the upcoming trial date. Although the parties have had telephone conferences and individual meetings with the judge handling the mediation, as well as a full-day mediation session on September 28, 2011 – which included participation from all four HBI presidents, among others – on October 6, 2011, the coalition sent correspondence to the court that “the very large gap between [the parties'] respective positions realistically requires that [they] now turn in earnest to trial preparation.” Despite this correspondence, neither party has been officially released from the obligation to participate in mediation.

In preparation for trial, the State has entered the appearance of three attorneys from a private law firm in Baltimore City on its behalf. A six-week bench trial is set to begin on Tuesday, January 3, 2012. The State and the plaintiffs are permitted to reach a settlement any time prior to final ruling and judgment. A settlement agreement would likely require the approval of the Board of Public Works. Since the case does not involve a claim for damages, if there were any commitment to future funding in a settlement agreement, it would require the Governor to include such funding in the annual budget bill and the General Assembly to approve the funding.



## Higher Education

### University System of Maryland Reviews Possible Merger of College Park and University of Maryland, Baltimore

Language in the fiscal 2012 Budget Bill restricts \$1 million for the University System of Maryland Office until the Board of Regents submits a report on the advantages and disadvantages of merging the University of Maryland, College Park and the University of Maryland, Baltimore, a realignment that would form a public higher education structure more similar to other states by combining the medical and law schools with the State's flagship institution. The Board of Regents has begun the study and held two public forums to get input from stakeholders. The report is due December 15, 2011.

### Most States Have United Flagship Institutions

Maryland is one of the few states in the country where the major comprehensive public research institution, the University of Maryland, College Park (UMCP), is not affiliated with the public medical school, which is part of the University of Maryland, Baltimore (UMB). Nationally, only three flagship institutions (in Alaska, Delaware, and Rhode Island) do not have a medical or law school. Only 14 do not have an affiliation with a medical school, including 2, Rutgers University and the University of Texas-Austin, that are seeking to add a medical school. In New Jersey, the Higher Education Task Force recommended in January 2010 that Rutgers University be merged with the state's medical school; the recommendation was reaffirmed in an advisory committee's September 2011 interim report. At the University of Texas-Austin, momentum is growing toward the establishment of a medical school, with the Board of Regents expressing support at its August 2011 meeting. In both cases, increases in research funding and prestige were cited as reasons for the inclusion of a medical school.

### Legislature Asks Board of Regents to Study Merger

Interest in creating an affiliation between UMCP and UMB arose during the 2011 legislative session. According to the *2010 Annual Report of the Top American Research Universities* by the Center for Measuring University Performance, in terms of total research expenditures, UMCP ranked thirty-ninth and UMB forty-first among the top 200 institutions that had over \$40 million in federal research expenditures in 2008. Johns Hopkins University ranked first. Of the 38 institutions ranked above UMCP, 13 were flagship universities, of which 11 have medical and law schools. If research expenditures for UMCP and UMB were combined, it would have ranked seventh. Proponents of a merger argue that a united UMCP and UMB would lead to increased research and would help to foster more collaborative activities, enabling the institutions to attract high-caliber faculty, staff, and students. However, while UMCP and UMB currently participate in some collaborative activities, an organizational, geographical, and



cultural divide exists between the two institutions that may impede the potential for faculty to form partnerships to pursue research and develop interdisciplinary programs.

In response to the interest in considering the merger, the fiscal 2012 Budget Bill included restrictive language on \$1.0 million of the appropriation for the University System of Maryland (USM) Office until the Board of Regents submits a report on the advantages and disadvantages of merging UMCP and UMB and whether a merger would be beneficial for the institutions involved and for USM as a whole. If the regents conclude that a merger would be feasible, then an outline of how this would be accomplished is to be included in the report.

### **University System of Maryland Explores the Possibilities**

In response USM developed a work plan outlining the approach to analyze the impacts of the proposed merger. The analysis will be organized around the responses to a series of questions addressing various aspects of a merger. A series of 12 questions were developed by USM presidents and system officials with specific questions to be studied by one of four task forces, each comprised of representatives from UMCP and UMB. The task forces will examine what impact a merger would have on:

- mission and quality of learning – including expanding access to underserved populations, facilitating cross-disciplinary collaboration, and the effects on institutional missions;
- cultural/geographical/cost/administrative issues – including financial costs and savings, and the impact of State and federal requirements on a combined institution;
- technology transfer and commercialization; and
- economics and quality of life in surrounding communities.

There is also a fifth task force comprised of senior officials from all USM institutions that will examine what impacts a merger would have on the institutions and USM as a whole.

In order to obtain input from all stakeholders, two public forums were held in October. Comments at the first forum, held at UMB, revolved around two themes. First, Senate President Thomas V. Mike Miller, Jr., who originally proposed the budget language, testified that his concept would be one University of Maryland, with two aligned campuses and two presidents, to promote interdisciplinary collaboration and leverage research investments. Several speakers noted that if increasing collaboration between the two institutions is the goal, then the State should find other ways, besides a merger, to encourage and build partnerships. A second theme suggested by the Mayor of Baltimore and others was that a merger could weaken UMB's ties with the local community. Comments at the second forum at UMCP were generally more favorable toward realignment, noting that the State needs to determine how to best organize its research assets. Hunter Rawlings, a former President of Cornell University who was asked to

speak at the forum, summarized his experience in uniting the university's Ithaca campus and the medical school in New York City, which, over the years, had become basically two separate campuses. While it took time to overcome the cultural and other barriers, Dr. Rawlings believes the reunification has been successful.



# Higher Education

## Further State Regulation of For-profit Institutions and Distance Education Considered

In response to concerns about the growing number of students enrolled in for-profit institutions and the lack of federal or State oversight of these institutions, legislation was enacted in 2011 to increase regulation of for-profit institutions in Maryland. Discussions during the 2011 session raised numerous issues that continue to be studied this interim by a group of legislators from the Senate and House committees with jurisdiction over higher education issues. The study group is expected to propose legislation in the 2012 session to regulate out-of-state institutions, which are primarily for-profit, that offer online programs in Maryland.

### Enrollment at For-profits Skyrockets in the United States and Maryland

According to the Education Trust, between 1999 and 2009, enrollment at for-profit institutions of higher education increased 236%, compared to an increase of 20% at public and private nonprofit institutions during the same time period. In Maryland during roughly the same period (1998-2008), enrollment at for-profit institutions grew 172% as reported by the Chronicle of Higher Education. This extremely rapid growth raised concerns about the quality of instruction at for-profit institutions, the amount of federal aid received by for-profit institutions, the tactics used by for-profit institutions to recruit students, and the ability of for-profit institutions to prepare their students for jobs consistent with the institutions' targeted marketing approach suggesting that a specific set of skills will lead to employment in a specific career.

Additionally, in a niche area of higher education typically associated with for-profit institutions, during almost the same time period (between 2000 and 2008), the National Center for Education Statistics found that the percentage of undergraduate students enrolled in at least one distance education or online course more than doubled (increasing from 8% to 20%). Although online or distance education courses are offered by all sectors of higher education, concerns regarding the quality and rigor of instruction at for-profit institutions, combined with the fact that purely online education is largely unregulated, has resulted in a particular focus on online instruction offered by for-profit institutions.

### National Regulatory Efforts

In response to some of the concerns about for-profit institutions and online programs, in October 2010 and June 2011 the U.S. Department of Education (USDOE) issued regulations aimed at improving the integrity of programs at higher education institutions and the gainful employment of students who attend higher education institutions. The regulations apply to all programs at for-profit institutions except those that lead to a degree in liberal arts, but apply only

to programs at public and private nonprofit institutions that do not lead to a degree. The regulations are extensive, but the main provisions address misleading or overly aggressive recruiting practices; establish a minimal set of requirements for state authorization of distance education programs; and require certain student debt-to-earnings ratios and repayment rates to be met. If these provisions are not met, institutions could lose eligibility for federal Title IV student aid beginning in the 2013-2014 academic year. Title IV includes Pell and other grants for low- and middle-income students as well as student loans and work-study aid for eligible students.

In addition, three major national efforts are currently underway to coordinate and address state authorization of distance education: (1) the President's Forum and the Council of State Governments have teamed up to explore the potential of a multi-state reciprocity agreement that would streamline the approval process for institutions seeking to offer distance education programs in different states, while enabling states to operate essential regulatory functions with greater consistency and efficiency; (2) the Association of Public and Land-grant Universities has organized a national commission that is working with USDOE to develop a sound and reasonable regulatory structure for distance learning; and (3) State Higher Education Executive Officers is compiling a directory of state regulators and a summary of state regulations on distance education. Although the USDOE regulations establish a minimal set of requirements for state authorization of distance education programs, this "state authorization" provision merely requires institutions to follow the existing laws of states in which they serve students and does not require states to take any additional action to regulate distance education.

## **Maryland's Efforts**

### **2011 Law Regulates For-profits for the First Time**

In an effort to address some of the concerns about for-profit institutions in Maryland, legislation was enacted in 2011 (Chapter 277) that distinguished between public, private nonprofit, and for-profit institutions of higher education and increased the regulation of for-profit institutions by prohibiting deceptive recruiting practices, banning incentives for recruiting students, and creating a separate guaranty fund to reimburse students at for-profit institutions who are entitled to a refund of tuition and fees due to the for-profit institution's breach of an agreement or a contract. Additionally, Chapter 277 clarified the process for approval of programs offered by for-profit and nonprofit institutions of higher education and requires notification to students if a program is not recommended for implementation by the Maryland Higher Education Commission (MHEC).

### **Interim Study on the Regulation of Higher Education Institutions**

Although Chapter 277 took some action to regulate for-profit institutions, several representatives of the education subcommittees of the Senate Education, Health, and Environmental Affairs Committee and the House Appropriations Committee are conducting an interim study to further review issues relating to the regulation of public, private nonprofit, and

for-profit institutions of higher education. As of November 2011 the group had held four meetings during which it heard from the higher education segments in Maryland, MHEC, USDOE, the Southern Regional Education Board, and the Association of Private Sector Colleges and Universities. The meetings have also included work sessions to begin discussing options for further regulation of higher education institutions in Maryland.

Discussions have centered around regulating distance education in Maryland, with a particular emphasis on out-of-state distance education providers. Currently, Maryland does not regulate out-of-state institutions that do not have a physical presence in the State, which means that Maryland has no oversight of out-of-state institutions that only offer programs online to Maryland students. Legislators have discussed expanding the definition of physical presence in Maryland to include activities such as online advertising to students, in-state recruiting of students, in-state faculty, in-state student services, and in-state internships, but excluding a passive website from the definition. If the definition of physical presence is expanded, the members have discussed the appropriate level of oversight for the institutions. Preliminarily, the group has considered two options: (1) requiring MHEC to license, approve, or register the institutions; or (2) requiring MHEC to verify or approve an institution's accrediting body for rigor and quality and rely on the approved accreditors to ensure the quality of the institution. In light of concerns that MHEC would be overwhelmed by the potential requirement to license and approve approximately 1,300 online institutions operating nationwide, it is possible that the members will recommend the second option.

Other requirements for institutions captured under an expanded definition of physical presence that have been discussed include (1) making the institutions subject to complaint investigation by the Consumer Protection Division of the Attorney General's Office for deceptive or unfair practices; (2) requiring the institutions to contribute to the guaranty fund established in Chapter 277; (3) prohibiting the institutions from paying commissions, bonuses, or other incentive payments based on recruiting; and (4) requiring the institutions to submit data to MHEC and the Maryland Longitudinal Data System.

The study group is planning to have its final interim meeting in December 2011 and will likely propose legislation during the 2012 session to further regulate higher education institutions enrolling students in Maryland.



# Health and Health Insurance

## The Implementation of Federal Health Care Reform in Maryland

**Despite ongoing litigation over the constitutionality of federal health care reform legislation, Maryland is actively moving forward to implement provisions of the law that take effect on January 1, 2014.**

### Patient Protection and Affordable Care Act

The federal Patient Protection and Affordable Care Act (ACA) signed into law on March 23, 2010, aims to expand health care coverage, primarily by making coverage more affordable. **Exhibit 1** summarizes the major ACA provisions currently in effect, as well as those taking effect on January 1, 2014.

#### Exhibit 1 Affordable Care Act Provisions

##### Provisions Already in Effect

- Insurance market reforms
  - Coverage for adult children up to age 26
  - Ban on lifetime and certain annual benefit limits
  - Coverage of preventive health benefits with no cost sharing
  - Medical loss ratio requirements for insurers
  - Review of insurance rate increases required
- Federal high risk pool for individuals uninsured for at least 6 months
- Federal reinsurance for employers covering retirees over age 55 who are not eligible for Medicare
- Discounts on prescription drugs for Medicare beneficiaries
- Small business tax credits for providing insurance to employees

##### Provisions Taking Effect 1/1/2014

- Guaranteed issue of individual insurance
- Limits on rate variations by age, family composition, geography, and smoking
- Individual mandate to have health care coverage or pay tax penalty
- State-based health benefit exchange to help individuals and small businesses obtain affordable coverage
- Medicaid expansion to 133% of the federal poverty level
- Federal subsidies for individuals over 133% and up to 400% of the federal poverty level
- Increase in small business tax credits from 35 to 50% of premium
- Penalty on large employers when employee obtains subsidized coverage through the exchange

Source: Department of Legislative Services



## **Maryland Health Care Reform Coordinating Council**

To oversee and coordinate health care reform implementation in Maryland, Governor Martin J. O'Malley established the Maryland Health Care Reform Coordinating Council in 2010. A 2011 executive order altered and extended the council and also created the Governor's Office of Health Care Reform. The office is charged with identifying implementation responsibilities and deadlines, providing staff support to the council, and coordinating a statewide public education and outreach effort. The council has also established a Health Care Delivery Reform Subcommittee, which is charged with disseminating information on strategies to improve health while containing cost.

## **State Legislation**

The General Assembly has played an active role in health care reform, through both implementing legislation and participation on the council. Laws enacted in 2010 and 2011 brought the State's insurance requirements into federal compliance; gave the Insurance Commissioner authority to enforce new federal consumer protections; created a federal high risk pool as a component of the Maryland Health Insurance Plan; authorized the Community Health Resources Commission to provide technical assistance to safety net providers; authorized prescription drug benefits in the State Employee and Retiree Health and Welfare Benefits Program to be discontinued for Medicare-eligible retirees in fiscal 2020 (when the "donut hole" in Medicare drug coverage is eliminated); and established the Maryland Health Benefit Exchange.

## **Maryland Health Benefit Exchange**

Established by Chapters 1 and 2 of 2011, the Maryland Health Benefit Exchange is a public corporation and independent unit of government created to (1) reduce the number of uninsured; (2) facilitate the purchase and sale of qualified health plans in the individual market; (3) assist qualified employers to enroll their employees in qualified health plans in the small group market and access small business tax credits; (4) assist individuals in accessing public programs, premium tax credits, and cost-sharing reductions; and (5) supplement the individual and small group insurance markets outside of the exchange.

Among its initial activities, the exchange is working to complete a number of legislatively mandated studies due on December 23, 2011. The studies will include findings and recommendations on:

- the feasibility and desirability of the exchange engaging in selective contracting and multistate or regional contracting;

- the rules under which health benefit plans should be offered inside and outside of the exchange;
- the design and operation of the exchange's Navigator Program;
- the design and function of the small business (SHOP) exchange;
- how the exchange can be self-sustaining by 2015, as required under the ACA; and
- how the exchange should conduct its public relations and advertising campaign.

The studies will provide a framework for 2012 legislation in these areas.

The exchange has hired consultants and, as required under Chapters 1 and 2, created advisory committees to assist in evaluating options for the six studies. Additionally, the exchange issued requests for proposals in October 2011 to procure an eligibility and enrollment system, support the development of a call center and other resources for consumers, and build an analytic model to project enrollment for the exchange. The eligibility and enrollment system is a critical component of the exchange. The State has elected to establish a single information technology infrastructure to (1) evaluate eligibility for exchange plans, most Medicaid eligibility groups, and the Maryland Children's Health Program (MCHP); and (2) advance premium tax credits and cost sharing subsidies. Eligibility determination for other Medicaid eligibility groups and other human services programs is planned to be integrated into the eligibility and enrollment system.

Thus far, exchange activities have been funded through federal grants. Three grants have been received: (1) a \$1.0 million planning grant; (2) a \$6.2 million Early Innovator grant, which focuses on information systems development; and (3) a \$27.2 million establishment grant, which is paying for staff, the consultants to assist with the legislative studies, and operating costs, including information technology, of the exchange through 2014.

## **Health Care Workforce**

Expansion of health care coverage is expected to increase demand for health care and the need for additional health care practitioners. The ACA provides grants and other resources to expand the country's health care workforce. The Governor's Workforce Investment Board received a \$150,000 federal grant to develop a strategic plan for expanding the primary care workforce in the State by 10 to 25% over the next 10 years. Recommendations in the plan that may require legislation, relate to scope of practice, licensing and credentialing, education loan forgiveness, and Medicaid reimbursement.

## **Health Insurance Rate Review**

A goal of the ACA is to protect consumers from insurance rate increases that are unreasonable, unjustified, or excessive. The Maryland Insurance Administration (MIA) engaged a consultant to evaluate the State's current rate review processes, recommend enhancements, and identify any new rate review processes required under the ACA. The work was funded through a \$1 million federal premium rate review grant. As a result of the consultant's review and comments received at a public hearing, MIA intends to make several changes to the rate review process:

- perform enhanced rate reviews for all rate filings proposing a change in rates in the individual and small group markets (phased in between September 1, 2011, and January 1, 2013);
- require submission of specified justification forms for rate filings subject to an enhanced rate review process and consider the factors included in the justification forms to determine whether a proposed rate increase is unreasonable;
- standardize rate filing and rate review forms;
- explore with the Health Services Cost Review Commission and the Maryland Health Care Commission, the use of their data to develop benchmark trends; and
- consider seeking express statutory authority to disapprove rate filings of insurers and health maintenance organizations based on "any other relevant factors within and outside the State," consistent with the express statutory authority to disapprove rates for nonprofit health service plans.

To increase transparency and opportunity for public comment, MIA will provide access from its website to the justification forms for proposed rate increases subject to review. MIA has also established a dedicated email address for consumers to submit comments regarding these rate filings.

## **Medicaid Expansion**

Health care reform builds on many of Medicaid's current roles by expanding coverage with enhanced federal financing. The Department of Health and Mental Hygiene (DHMH) is responsible for implementing the Medicaid expansion, transitioning to a new income eligibility methodology based on modified adjusted gross income, maintaining adequate provider networks for Medicaid enrollees, and developing a new eligibility system that will coordinate with the State health insurance exchange and existing programs. Under federal reform, by

January 1, 2014, Medicaid eligibility will be expanded to nearly all individuals under age 65 with incomes up to 133% of the federal poverty level (FPL).

## **Continuity of Coverage**

Latest estimates of the impact of federal health reform are that 190,000 individuals will be added to the Medicaid rolls within the first 18 months (including those currently enrolled in the Primary Adult Care Program who will receive a full benefit package rather than the current limited benefit package). Individuals are expected to move between Medicaid and the exchange as their households move above or below the line at 133% FPL. DHMH is exploring ways to achieve continuity of coverage for individuals near the Medicaid income threshold and for families in which children receive coverage under the MCHP and the parents receive coverage through the exchange. One option to reduce the churn between Medicaid and the exchange is the Basic Health Program (BHP) option. The BHP gives states 95% of what the federal government would have spent on tax credits and subsidies for out-of-pocket costs for adults with income between 133 and 200% FPL, and legal resident immigrants with incomes below 133% FPL whose immigration status disqualifies them from federally matched Medicaid. If a state implements the BHP, these two groups of consumers cannot receive subsidized insurance through a health exchange, but receive coverage through the state.

## **Legal Challenges**

On November 14, 2011, the U.S. Supreme Court issued its decision to hear an appeal of *State of Florida v. U.S. Department of Health and Human Services*, a case challenging various provisions of the federal law. The Supreme Court will hear arguments on four issues in March 2012: (1) whether the individual mandate is constitutional; (2) whether the individual mandate can be severed from the rest of the ACA if it is found to be unconstitutional; (3) whether a challenge to the individual mandate is precluded under the federal Anti-injunction Act before 2015, when the mandate goes into effect; and (4) whether Congress exceeded its constitutional authority by requiring states to expand Medicaid coverage. A decision is expected by late June 2012.

Federal circuit courts of appeals have been split on the constitutionality of the individual mandate and whether the federal Anti-injunction Act applies. A panel of the U.S. Court of Appeals for the Eleventh Circuit upheld the district court's ruling in the Florida case that the individual mandate is unconstitutional. In contrast, panels of two federal circuit courts of appeals (a panel of the U.S. Court of Appeals for the Sixth Circuit in *Thomas More Center v. Obama* and a panel of the U.S. Court of Appeals for the District of Columbia in *Susan Seven-Sky v. Eric Holder, Jr.*) have found the individual mandate to be constitutional. At the core of the issue is the question of whether the decision not to buy health insurance is an economic decision that substantially affects interstate commerce. A panel of the U.S. Court of Appeals for the Fourth Circuit dismissed *Liberty University v. Geithner* on jurisdictional grounds, finding that the federal Anti-injunction Act prohibited a challenge to the individual

mandate before the government attempted to enforce it. All other federal circuit courts of appeals that have considered that issue have ruled that the Anti-injunction Act does not apply. The key question regarding that issue is whether the penalty for violating the individual mandate is a tax for which the Act applies. It should also be noted that, even though the U.S. Supreme Court will hear arguments on the Medicaid expansion under ACA, every court that has considered that issue has ruled that the Medicaid expansion is constitutional.

## **2012 Session**

Spurred by ACA mandates, State laws enacted in 2010 and 2011, and federal grants, the State has moved expeditiously with implementation of health care reform. While litigation pending before the U.S. Supreme Court could undo the federal mandates legislation, to continue ACA implementation in Maryland measures anticipated at the 2012 session include determining how the exchange will operate; providing additional authority to MIA for premium rate reviews, fostering growth of the primary care workforce; and potentially considering the Basic Health Program.

# Health and Health Insurance

## Medicaid Population and Financing Trends

<b>Use of Medical Assistance programs remains high, although there are indications that enrollment growth is slowing. Debt reduction talks at the national level could impact the Medicaid program, but probably not immediately.</b>
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### Overview

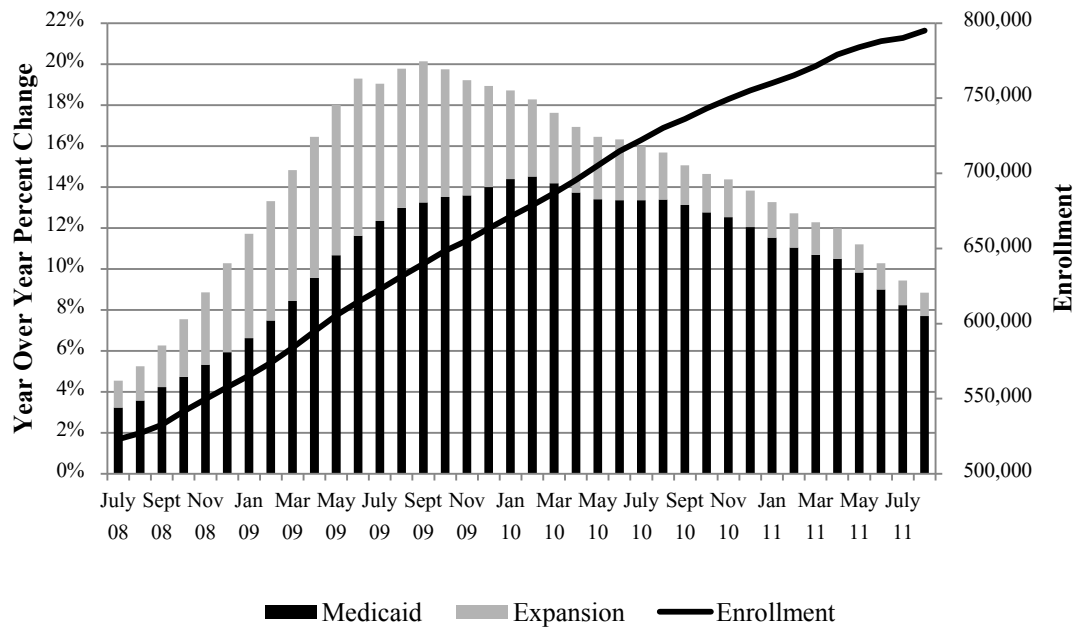
Maryland's Medical Assistance Programs (Medicaid, Maryland Children's Health Program (MCHP), Primary Adult Care, Employed Individuals with Disabilities, etc.) provide eligible low-income individuals with comprehensive health care coverage. Funding is derived from both federal and State sources with a federal fund participation rate of 50% for Medicaid and 65% for the MCHP. The federal matching rate was temporarily increased by the federal American Recovery and Reinvestment Act of 2009 (ARRA). However, the enhanced match rate provided by the ARRA ended at the end of fiscal 2011.

### Fiscal 2012 Outlook

The fiscal 2012 Medical Assistance Programs working appropriation of just under \$7.0 billion (over \$3.5 billion in general and special funds) appears to be very close to projected need, with only a \$27.0 million (\$13.5 million in general/\$13.5 million in federal funds) deficit projected. However, the Medical Assistance program did rollover bills from fiscal 2011 into fiscal 2012 (an estimated \$285.0 million general/\$142.5 million federal funds) for a projected total general fund deficit of \$156.0 million. The shortfall in fiscal 2011 was anticipated and primarily reflects unfunded Managed Care Organization (MCO) calendar 2011 rate increases and higher than anticipated enrollment.

Expenditures for fiscal 2012 services are expected to exceed fiscal 2011 costs by about 4.9%, a marked moderation in increase from the prior year when fiscal 2011 costs grew by 10.3% over fiscal 2010. This reflects a gradual slowing of the rate of increase in program enrollment (see **Exhibit 1**), greater use of managed care to serve program enrollees, the impact of cost containment actions in the fiscal 2012 budget, and a scheduled MCO rate reduction of 1.5% in calendar 2012. Costs per enrollee are actually anticipated to decline slightly between fiscal 2011 and 2012.

**Exhibit 1**  
**Medicaid Enrollment Continues to Grow, but at a Much Slower Pace**  
**Fiscal 2009-2012 Year-to-date**



Source: Department of Legislative Services

### Fiscal 2013 Forecast

In fiscal 2013, the expenditures for the Medical Assistance Programs are estimated to be just over \$7.25 billion, a 3.7% increase from the fiscal 2012 estimate. This estimate is based on a continued moderation of enrollment growth (3.5%), continued constraints on medical inflation/utilization including the ongoing effects of MCO rate reductions in the first six months of the fiscal year and the assumption of only modest rate increases in calendar 2013, and the assumption of growth in the percentage of Medicaid enrollees served in managed care.

As a result, general fund need is expected to grow by \$142 million (5.7%). However, it should be emphasized that this assumes continued reliance on special fund sources (over \$870 million), primarily derived from a variety of provider assessments (on MCOs, hospitals, and nursing homes).

In the long-term, the sustainability of provider assessments to support Medicaid and other programs is threatened. Debt reduction negotiations at the federal level appear to be considering capping the level of provider assessments at 3.5% (a reduction from the current ceiling of 6.0%). Current assessments on hospitals and nursing homes are above this level. Another proposal

being considered is to use a single blended federal matching rate rather than the different rates currently in effect within a single state program, a situation which becomes more complicated with the implementation of federal health care reform. While a single blended rate may ease administration of the Medicaid program, it will be structured to save federal dollars and, thereby, shift costs to the states.

Enrollment and expenditure data for fiscal 2001 through 2013 are summarized in **Exhibit 2**.

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**Exhibit 2**  
**Medicaid Enrollment and Service Year Expenditures\***  
**Fiscal 2011-2013**

	<u><b>2011 Actual</b></u>	<u><b>2012 Estimate</b></u>	<u><b>2013 Estimate</b></u>	<u><b>2012-2013 % Change</b></u>
<b>Enrollment by Category</b>				
Medicaid	685,742	722,415	745,637	3.21%
MCHP	98,013	97,776	99,697	1.96%
Medicaid Expansion to Parents	71,263	80,950	87,426	8.00%
<b>Total</b>	<b>855,018</b>	<b>901,141</b>	<b>932,760</b>	<b>3.51%</b>
<b>Cost Per Enrollee</b>	<b>\$7,627</b>	<b>\$7,559</b>	<b>\$7,573</b>	<b>0.19%</b>
<b>Total Funds (\$ in Millions)</b>	<b>\$6,521</b>	<b>\$6,812</b>	<b>\$7,064</b>	<b>3.71%</b>

MCHP: Maryland Children's Health Program

\*Expenditures by fiscal year are based on the cost of providing services during that fiscal year rather than the year that the bills were actually paid. Cases and funding associated with the Maryland Primary Adult Care Program and the Kidney Disease Program are excluded from the chart and explains any difference between expenditures cited in the main body of the text versus the chart.

Source: Department of Legislative Services

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# Health and Health Insurance

## Medical Marijuana

**A workgroup established under 2011 legislation to discuss how to implement a medical marijuana program has offered two markedly differing visions of how such a program would work. The legislature may have to choose between the two in the upcoming session.**

### Medical Marijuana Model Program Workgroup

Chapter 215 of 2011 required the Secretary of Health and Mental Hygiene to convene a workgroup to assess the feasibility of, and develop a State-specific plan for, providing medical marijuana to patients in the State. Additionally, the workgroup is required to (1) strongly consider a plan that is analogous to the compassionate use protocol that allows patients to be treated with drugs that have not yet been approved for use by the federal Food and Drug Administration (FDA); (2) give guidance on criteria for assessing program applicants; and (3) submit a report that includes draft legislation to certain committees of the General Assembly by December 1, 2011.

Due to a lack of consensus regarding the form the State's medical marijuana program should take, the workgroup is planning on submitting two separate plans for consideration by the General Assembly. One plan would be based on an investigational use model, while the other would more closely follow the traditional medical marijuana program model that is used in other states.

### Investigational Use Model

The investigational use model puts more emphasis on the scientific study of the effects of marijuana on illnesses, rather than on patient access to marijuana. Under the model, medical marijuana would be available to patients through investigational use programs that are established and run by academic medical research institutions. An oversight entity would issue requests for proposals for investigational use programs, approve applications submitted by academic medical research institutions, and oversee the running of the programs by the institutions. The oversight entity would either be an advisory group to the Department of Health and Mental Hygiene (DHMH), with the department having final approval of program applications, or a more independent group analogous to a professional licensing board.

In order to begin an investigational use program, the academic medical research institution would be required to submit an application to the oversight entity. In the application, the institution would address various issues including (1) the medical conditions for which the patients would be treated with medical marijuana; (2) the criteria for including or excluding

patients from the program; (3) how the patients will be assessed for addiction before and during treatment; (4) how medical providers will be eligible to participate in the program; (5) possible sources of funding; and (6) a plan for defining and monitoring the success or failure of the treatment. The program would be required to submit annual reports to the oversight entity on the number of patients served, the county of residence of the patients, the conditions treated, outcome data, and any research studies conducted under the program.

To address concerns regarding diversion of the medical marijuana, the program application would also have to describe (1) the source of the marijuana that would be used in the program; (2) the training that would be required for providers and patients on diversion; (3) how the program will monitor for diversion; and (4) how the program will address violations of the program's diversion policy. Additionally, marijuana growers that would be used by the program would be separately licensed by the State. Information regarding patients enrolled in the program would be updated daily to the Prescription Drug Monitoring Program so that law enforcement officers would have accurate information regarding individuals who possess marijuana because of their participation in a legitimate medical marijuana program. Also, the State plan would include additional penalties for gross misuse of a program for diversion purposes.

### **Traditional Medical Marijuana Program Model**

The traditional medical marijuana program model mirrors programs used in other states and emphasizes patient access to marijuana. Under this model, an independent commission, which is supported by one or more State departments, would be charged with registering academic centers, growers, and dispensers. While the commission would oversee the medical marijuana program, DHMH could be charged with selecting and regulating academic centers, while the Department of Agriculture could regulate growers and dispensers.

The traditional model addresses patient access to medical marijuana in several ways. First, the definition of an academic center is broader than the definition used under the investigational use model. For instance, academic centers include physicians, hospitals, research programs, health plans, and other entities that meet the requirement of the ability to create, manage, fund, and report to the commission. Furthermore, academic centers would be encouraged to work with physicians who are not directly employed by the institutions and work in different parts of the State to improve patient access to medical marijuana. Secondly, under the traditional model, dispensaries would be licensed by the State to improve accessibility to medical marijuana. In comparison, the investigational use model requires medical marijuana to be administered by an academic medical research institution, which limits patient access to medical marijuana. The traditional model also addresses the role of caregivers within a medical marijuana program. Caregivers are individuals that are permitted to pick up medical marijuana for patients and assist patients with the act of administering marijuana or preparing it for administration. Caregivers would be subject to criminal history records checks and permitted to assist no more than five patients. Under the investigational use model, the role of caregivers is not discussed; however, it is important to note that caregivers increase patient access to medical

marijuana since they assist patients who are otherwise too ill to pick up or administer the medical marijuana themselves.

In order to participate in the medical marijuana program, an academic center would be required to submit an application to the commission. The application process under the traditional model differs from the investigational use model in a few ways. For instance, an application under the traditional model must also include (1) the frequency with which patients will be offered follow-up care and evaluation; and (2) information on research or clinical trials the academic center plans on conducting, including how the center plans on analyzing and reporting program data. Academic centers and their affiliated physicians would also set medical criteria for patients. Furthermore, to participate in the program, patients would need to be certified by a physician affiliated with an approved academic center.

To address concerns regarding diversion of the medical marijuana, the commission would be charged with crafting regulations to prevent diversion and ensure security. In addition, when evaluating applicants to cultivate marijuana, the commission must evaluate their plans to ensure security and prevent diversion. Furthermore, protocols instituted by the FDA and Maryland regarding the security, the manufacturing and the storage of marijuana would be used as guidance. Patients would also be required to carry an identification card, or their information would be maintained in an electronic database so that law enforcement could immediately verify if an individual in possession of marijuana is certified to participate in the program.

## **Fiscal Implications**

Under the investigational use model, fees derived through the medical marijuana program would be intended to cover the costs of administering the program. In comparison, the traditional model indicates significant revenue could be generated from fees paid by growers, dispensaries, and pharmacies that choose to participate in the program. Revenues could also be derived from patients that are required to pay a fee for their identification card. Under the traditional model, the commission recommends any surplus attributable to the medical marijuana program could be used to fund studies related to the medical marijuana program or clinical trials with any excess funds going to support the State's general fund.



# Health and Health Insurance

## Bisphenol-A

**Numerous studies have identified harmful health effects associated with exposure to the chemical Bisphenol-A (BPA). However, as states (including Maryland) have restricted the use of BPA in certain products, many producers have begun marketing as “BPA-free” products containing certain BPA substitutes that may be equally or more harmful.**

### Background

Bisphenol-A (BPA) is a compound found in many plastics. According to the federal Centers for Disease Control and Prevention, BPA can leach from the linings of canned foods and polycarbonate food and beverage containers. Since the 1960s, the U.S. Food and Drug Administration (FDA) generally had considered exposure to BPA through food packaging to be safe. However, in January 2010, FDA released new findings stating its concerns regarding the effects of BPA on the brain, behavior, and prostate gland in fetuses, infants, and young children. Recent studies show that infants are exposed to BPA at levels above those that cause adverse effects – including birth defects of the male and female reproductive systems – in laboratory studies. BPA has been found in breast milk, amniotic fluid, and cord blood indicating exposure to the developing fetus and newborn.

### Federal Regulation

The U.S. Environmental Protection Agency (EPA) keeps a list of more than 83,000 commercially manufactured or imported chemicals (including BPA) and is authorized, under the Toxic Substances Control Act of 1976, to test chemicals on the list after an outside source has informed the agency that there is a proven problem. In other words, the current regulatory system does not require manufacturers to prove such chemicals to be safe before using them in a consumer product. Over the past 35 years, EPA has regulated five chemicals within its chemical inventory.

Every two years the U.S. Government Accountability Office (GAO) provides the U.S. Congress with an update on its High-Risk Program, which highlights major problems at the federal level. GAO has designated EPA’s process for assessing and controlling toxic chemicals as a high-risk area since 2009 because EPA has failed to assess the toxicity of many chemicals used commercially in the United States. According to GAO’s most recent update, EPA’s backlog as of June 2009, consisted of over 70 ongoing toxic assessments – most of which had been ongoing for more than five years.

EPA's most recent review of BPA occurred in 1988, although the agency launched a major investigation into the risks of BPA in March 2010. Studies over the past 20 years have indicated that BPA is toxic at doses far below EPA's safety standards. Although EPA had anticipated publishing an advance notice of rulemaking in late 2010, no such notice has yet been published, and the agency has not initiated any regulatory action under the Toxic Substances Control Act at this time.

The Safer Chemicals Act of 2011, which became stalled in the Environment and Public Works Committee, would have updated the Toxic Substances Control Act by requiring chemical manufacturers to demonstrate to EPA the safety of a product prior to its sale to consumers.

## **State Legislation**

Maryland has recently begun to restrict certain uses of BPA. Chapters 46 and 47 of 2010 prohibit the manufacture, distribution, or sale of child care articles (defined as an empty bottle or cup to be filled with food or liquid that is designed or intended by a manufacturer to be used by a child under the age of four years) containing BPA after January 1, 2012. Chapters 189 and 190 of 2011 extend this prohibition to infant formula in a receptacle that contains BPA. A manufacturer must instead use the least toxic alternative and may not replace BPA with specified carcinogens or reproductive toxicants. A violator is guilty of a misdemeanor and subject to fines of up to \$10,000 per violation.

According to the National Conference of State Legislatures, 18 states considered 59 measures in 2010 to curtail the use of BPA. Six states other than Maryland (Connecticut, Minnesota, New York, Vermont, Washington, and Wisconsin) have enacted restrictions since 2009.

## **BPA Substitutes**

Due to consumer demand, a number of manufacturers have voluntarily stopped producing child care articles containing BPA, including the six main baby bottle manufacturers. Wal-Mart, Toys "R" Us, and Babies "R" Us have all begun phasing out certain child care articles containing BPA. Other producers – including Nestlé, the world's largest food manufacturer – have begun phasing out the use of BPA in all products sold in the United States.

Concurrently, manufacturers have begun marketing products as "BPA-free." However, recent studies have identified at least two serious issues with such products.

- Tests to determine whether a plastic is properly labeled as BPA-free did not account for real-world conditions (such as dishwashing and microwaving), and some plastics labeled as "BPA-free" actually leached more BPA under such conditions than did non-labeled plastics.

- Limited testing indicates that BPA substitutes such as Bisphenol-S exhibit estrogenic activity and thus may cause harmful health effects similar to those caused by BPA.

## **Conclusion**

Under the current regulatory system, a manufacturer may use potentially harmful chemicals such as BPA for years before being compelled – whether by state legislative action or consumer demand – to substitute other chemicals. Further, that same regulatory system appears incapable of ensuring that substitute chemicals do not have the same or different potential health issues.





# Health and Health Insurance

## Developmental Disabilities Issues

**The Developmental Disabilities Administration (DDA) has been working to implement recent funding increases aimed at reducing the Waiting List Initiative. At the same time, new and long-standing concerns about the ability of DDA to handle its financial resources raise questions about the financial capability at the administration.**

### Waiting List Initiative

In the 2011 session, the legislature appropriated an additional \$15.0 million to the Developmental Disabilities Administration (DDA) for the Waiting List Initiative in fiscal 2012 based on its concern over the lack of services available to meet the demand from individuals with developmental disabilities. Funding was provided through Chapter 571 of 2011, which increased the State sales and use tax rate imposed on alcoholic beverages from 6 to 9% and required a supplementary appropriation of \$15.0 million for DDA in fiscal 2012 to fund the Waiting List Initiative. This supplemental appropriation was provided in spite of the fact that the budget for DDA had rapidly increased over the past decade, from \$438.8 million in fiscal 2001, to an estimated \$831.3 million in fiscal 2012 – nearly a 90% increase.

Funding appropriated for the Waiting List Initiative must be used to assist individuals in the Crisis Prevention and Crisis Resolution categories of the waiting list.<sup>1</sup> The Department of Health and Mental Hygiene (DHMH) advises the \$15.0 million appropriation is also partially matched by federal funds based on the number of people served in the Crisis Resolution category; however, one-time services provided for individuals in the Crisis Prevention category are not eligible for a federal match.

As of October 12, 2011, there were 67 individuals in the Crisis Resolution category. Since July 1, 2011, 87 people have moved off the Crisis Resolution category and into services utilizing funding available through the alcohol tax. This means DDA has committed at least \$4.04 million in general funds under the alcohol tax.<sup>2</sup> In addition, 17 individuals were moved from the Crisis Resolution category into the Crisis Prevention or Current Request categories and two people are deceased. It is important to note that in November, DDA is implementing an

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<sup>1</sup> The Developmental Disabilities Administration (DDA) waiting list is comprised of adults and children with developmental disabilities who are waiting for funding from DDA to obtain community-based services within the next three years. Prior to placement on the waiting list, an individual must be determined eligible for DDA funding based on definitions found in State law. Once an individual is determined eligible for DDA funding, the individual is placed on a waiting list which is broken down into three priority categories – Crisis Resolution, Crisis Prevention, and Current Request – based on an individual's need. Individuals in the Crisis Resolution category are in need of immediate ongoing assistance, while those in the Crisis Prevention category are in need of one-time funding and are considered at risk. Individuals within the Current Request category include those who are not at risk.

<sup>2</sup> General funds committed to deliver services for persons in Crisis Resolution do not reflect funds needed for resource coordination or behavioral support services.

expedited process to remove individuals remaining in the Crisis Resolution category and place them into services within 10 days, as opposed to several months. At the time of this writing, DDA was unable to provide Department of Legislative Services (DLS) with an updated number of individuals in the Crisis Prevention category. However, the agency advised that roughly 400 individuals will receive services of short duration beginning in December 2011.

## **Fiscal 2011 Budget Closeout**

At the same time that DDA has been working to address the waiting list, significant concerns emerged about the administration's fiscal capability as part of the 2011 budget closeout process. Specifically, DDA created improper purchase orders in the State's accounting system to avoid reverting funds to the State's general fund. This practice violated the yearly closing instructions for the Comptroller's General Accounting Division since this spending did not qualify as a valid encumbrance. In total, the agency reverted \$25.7 million in prior year spending. DHMH advises that these funds have likely been accruing for the past several years, and the department is in the process of determining how long improper accounting practices have been occurring. Furthermore, an additional \$0.8 million in special funds was cancelled in fiscal 2011 as DDA failed to utilize monies available under the Waiting List Equity Fund.

Additionally, for fiscal 2011, DDA had a \$12.6 million general fund surplus. Instead of reverting these funds, the agency decreased federal fund expenditures by \$12.6 million and increased general fund spending by the equivalent amount, allowing DDA to carry forward an estimated \$12.6 million in unspent federal funds into fiscal 2012. It is important to note that DHMH is still in the process of verifying whether the \$12.6 million surplus attributable to fiscal 2011 is accurate. It is also unclear how DDA plans to spend this additional funding. DHMH is working with DDA to prepare the agency's 2013 budget request to account for inaccurate spending in prior fiscal years. Furthermore, DDA has hired a contractual accountant to assist with the agency's fiscal operations.

## **Wage Initiative**

The concerns raised about DDA's ability to adequately manage its finances are not new. For example, Chapters 109 and 110 of 2001 required DHMH to increase the rate of reimbursement for community service providers to eliminate the wage disparity between State and private direct-service workers. The legislation also required all increases in rate reimbursement to be used to directly increase compensation of direct-service workers. In total, \$81 million was appropriated through the Wage Initiative from fiscal 2003 to 2007. However, it remains unclear as to whether the Wage Initiative was successful in reaching its goal.

The Community Services Reimbursement Rate Commission (CSRRC) and DDA were required to annually survey community service providers to determine if the funds appropriated under the Wage Initiative successfully reduced the wage disparity between direct service workers

employed by private providers and the equivalent State positions. However, there were inconsistencies throughout the Wage Initiative survey data. For instance, data derived from DDA's annual wage and benefits cost survey in fiscal 2004 contradicted CSRRC's survey findings. Ultimately, DDA advised that CSRRC's survey data understated the amount of the wage increase. Additionally, a certain amount of the wage increase was provided to direct service workers as a bonus, rather than a salary adjustment, compromising the efforts to permanently increase the salaries of direct services workers. The Wage Initiative was also intended to increase the fringe benefits package for direct service workers so it was comparable to the State's fringe benefits package. In practice, however, the Wage Initiative did little to improve benefits for direct service workers.<sup>3</sup>

DDA was also hesitant to recover unspent funding under the initiative. DLS's Office of Legislative Audits noted in a 2009 audit that DDA had not taken timely action to recover funding totaling \$3.6 million from providers that did not use funds to increase the compensation for direct service workers, as intended. DDA's procedure was to annually require providers to submit reports of the amount spent to increase wages within four months of the end of the fiscal year. These reports were attested by independent certified public accountants and were used by DDA to determine whether funding was used for its intended purpose of increasing direct service workers' compensation. However, even though DDA received these reports annually for fiscal 2005 to 2007, DDA did not take any action until December 2008 to collect any funds that had not been spent for the initiative's purpose. In December 2008, DDA billed providers for such funds totaling \$3.6 million and, at the time of this report, \$2.3 million was still outstanding. DHMH advises that on November 1, 2011, DDA will refer these outstanding accounts to the Central Collection Unit at the Department of Budget and Management.

## **Oversight of Developmental Disability Providers**

Added to these concerns about DDA's internal fiscal capability, oversight of developmental disability providers has decreased in recent years due to the suspension of CSRRC. CSRRC is an independent body operated by DHMH that is concerned with issues regarding community services for individuals with developmental disabilities or psychiatric disabilities. Among other things, CSRRC concerns itself with rates paid to providers, wages of direct care workers, measurement of quality and outcomes, solvency of providers, and consumer safety costs. CSRRC must issue a report annually by October 1 to the Governor, the Secretary of Health and Mental Hygiene, and the General Assembly that describes its findings regarding these issues. The commission's findings and recommendations must be considered annually in developing the budgets of DHMH, DDA, and the Mental Hygiene Administration. However, CSRRC suspended operations in April 2009 and advised that the operation of CSRRC would cease until the services of a consultant were procured to support the commission's work.

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<sup>3</sup> Comparing the fringe benefit packages offered by providers and the State is problematic due to the fact that providers do not pay into the State Retirement and Pension System. Additionally, health insurance rates for some providers' budgets were financed by other payers diluting the amount of money allocated to increase benefits under the Wage Initiative.

Furthermore, it was advised that DHMH was in the process of soliciting a consultant to support CSRRC's activities as the fiscal 2011 budget included funding for the commission. As of October 2011, CSRRC resumed its activities.

# **Health and Health Insurance**

## **Health Occupations Boards: 2011 Sunset Evaluations and Legislative Directives on Disciplinary Processes**

**Maryland's health occupations boards regulate more than 385,000 health care professionals. This issue paper summarizes full sunset evaluations conducted on the State boards of Nursing, Pharmacy, and Physicians in 2011 and discusses recent legislative directives to the boards regarding their disciplinary processes.**

Maryland's 18 health occupations boards have regulatory authority over more than 385,000 health care professionals. The boards protect the public by ensuring that health care professionals are properly licensed and also investigate and resolve complaints about regulated professionals. The boards are subject to the periodic evaluation and reestablishment provisions of the Maryland Program Evaluation Act (sunset law) and, in recent years, have come under greater scrutiny by the General Assembly regarding their disciplinary processes.

### **Full Sunset Evaluations of Three Boards Conducted in 2011**

As required by the Maryland Program Evaluation Act, the Department of Legislative Services (DLS) performed full sunset evaluations of three health occupations boards in 2011 – the State boards of Nursing, Pharmacy, and Physicians. Each board is scheduled to terminate on July 1, 2013, and legislation must be enacted to extend the boards' termination dates and implement any of DLS' statutory recommendations that are adopted by the General Assembly.

#### **State Board of Physicians**

DLS finds that board has dedicated members, continues to process licenses proficiently, and has sufficient funds to support its activities. However, significant challenges face the board, including a growing backlog of complaints, an ongoing increase in the timeline for complaint resolution, balancing the need for transparency with the needs of licensees, and optimizing board resources. Unfortunately, the board has failed to implement key recommendations and requirements from previous sunset evaluations and currently fails to comply with statutory requirements in several areas such as public disclosure of board filing of charges and the Opening Meetings Act. The board failed to adopt regulations when required by law and has not updated regulations to be consistent with current board practice.

In total, DLS offers 46 recommendations to improve the operations of the board, including that budget language be adopted during the 2012 legislative session to withhold funds from the board until it has adopted sanctioning guidelines; that the board assess its fee-charging practices and develop a long-term fiscal plan; and that the board and DHMH jointly develop and implement a strategy for reducing the backlog of complaint cases. Based on prior performance,

DLS has significant concerns about whether the board will comply with these sunset recommendations. Therefore, DLS recommends that the termination date for the board and the related allied health advisory committees be extended by only one year to July 1, 2014, and that DLS be required to make a recommendation on further extension of the board based on the progress of the board in complying with the recommendations of this report and the submission of a follow-up report by the board.

### **State Board of Nursing**

DLS finds that there is a continued need for the board and recommends that its termination date be extended by 10 years. The board's workload has increased significantly since 2001, due to expanded licensure and certification responsibilities (the board now regulates more than two-thirds of all health care professionals in the State) and the implementation of a criminal history records check requirement. However, staff resources have not increased at the same rate. The board has responded relatively well to its expanded workload, but additional improvements are needed, particularly related to the collection of data, the backlog of certified medication technician applications, customer service, and public access to information.

In total, DLS offers 25 recommendations to make the board run more efficiently and improve its relationship with the individuals it regulates and the public. Recommendations require the board to contract with an independent entity to perform a personnel study; enhance its annual report; include a certified medication technician on the Nursing Assistant Advisory Committee; and report to the General Assembly on implementation of sanctioning guidelines. Several administrative recommendations are made related to customer service, cross-training, communication among personnel, website design, the maintenance and organization of data and administrative materials, and the criminal history records check and complaint review processes.

### **State Board of Pharmacy**

DLS finds that there is a continued need for regulation of the pharmacy industry and recommends that the board's termination date be extended by 10 years. In recent years, the board has dealt admirably with significantly expanded duties associated with the regulation of an industry that continues to grow at a rapid rate. Nonetheless, DLS identified specific issues that are affecting the board and makes 15 recommendations to enhance the board's efficiency and accountability, including that the board expand its use of Managing for Results goals; establish a formal process for information-sharing with the Department of Health and Mental Hygiene's (DHMH) Division of Drug Control; seek reclassification of certain positions to enhance staff retention; and report to specified committees of the General Assembly on the board's implementation of sanctioning guidelines and the status of the board's contractual relationship with the Pharmacists' Education and Advocacy Council.

DLS also found that the Drug Therapy Management Program, which is regulated jointly by the board and the State Board of Physicians, has been underutilized due in part to an onerous administrative process. Thus, DLS recommends amending statute to remove potential barriers to

participation and align the program with the policies of other Maryland health occupations boards and drug therapy management programs in other states.

## **Legislative Directives Regarding the Boards' Disciplinary Processes**

Chapter 212 of 2008 created the Task Force on the Discipline of Health Care Professionals and Improved Patient Care to issue recommendations regarding practices and procedures supporting the fundamental goals and objectives of the disciplinary programs of the boards and measures to enhance the fair, consistent, and speedy resolution of complaints concerning substandard, illegal, or unethical practices by health care professionals. The task force issued a series of recommendations for standardizing and improving board operations in 2009, most of which were codified under Chapters 533 and 534 of 2010.

Chapters 533 and 534 set standardized guidelines for all health occupations boards regarding disciplinary processes, board membership, and administrative matters. Among the requirements, the Acts required that all boards adopt sanctioning guidelines; establish a six-year statute of limitations on the bringing of charges against a licensee except under specified circumstances; post final public orders on their websites; establish a disciplinary subcommittee; notify licensees when there is a board vacancy; develop a training process and materials for new board members; and collect racial and ethnic information about applicants.

According to DHMH, several of the boards were already largely in compliance with the requirements of Chapters 533 and 534, while others have worked to improve their compliance since passage of the Acts in 2010. All of the larger boards have established disciplinary subcommittees, and revised training materials have been developed for new board members. The board administrators meet monthly, and an ongoing topic of discussion has been the collection of racial and ethnic data, though there is not yet a consensus among the boards as to how best to collect such data.

Five health occupations boards – Acupuncture, Dental Examiners, Examiners of Psychologists, Examiners of Nursing Home Administrators, and Physical Therapy Examiners – have submitted regulations for sanctioning guidelines to the Joint Committee on Administrative, Executive, and Legislative Review, and the State Board for Certification of Residential Child Care Program Professionals has developed but not yet submitted such guidelines. Other boards are anticipated to submit such regulations in the near future.

By December 31, 2011, each board must report its success in meeting the goals and requirements of the Acts, as well as ways in which separation of the board's disciplinary functions can be further achieved. By October 1, 2012, the Secretary of Health and Mental Hygiene must establish and report to the General Assembly on goals for the timeliness of complaint resolution. Additional information on the status of the board's implementation of Chapters 533 and 534 is anticipated in the December 2011 follow-up report.





# Social Programs

## Public Assistance Population and Financing Trends

**The growth in public assistance caseloads continues to moderate. However, significant additional general fund support is required to support temporary cash assistance payments in fiscal 2012 and 2013 because of a lack of federal block grant dollars.**

### Background

The poor economy has put increased pressure on public assistance programs, notably Temporary Cash Assistance (TCA) and the Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps. TCA provides monthly cash grants to needy children and their parents or caretaker relatives. TCA is funded with general funds, federal Temporary Assistance for Needy Families (TANF) block grant dollars, and certain child support collections. SNAP helps low-income people buy the food they need for good health. Benefits under SNAP are provided entirely from federal funds.

### Temporary Cash Assistance Caseload and Funding Trends

Since fiscal 2007, the TCA average monthly caseload has increased each year, an unsurprising trend given the recession and weak recovery especially as it relates to employment. The average monthly caseload increased by 2.4% in fiscal 2008, 13.5% in fiscal 2009, and 15.7% in fiscal 2010 before growth slowed to 7.1% in fiscal 2011. As shown in **Exhibit 1**, the Department of Legislative Services (DLS) assumes a leveling in the caseload with an estimated increase of 1.7% in the average monthly caseload in fiscal 2012 and no increase (nor decrease) in the average monthly caseload in 2013.

**Exhibit 1**  
**Temporary Cash Assistance Enrollment and Funding Trends**  
**Fiscal 2011-2013**

	<b><u>2011</u></b> <b><u>Actual</u></b>	<b><u>2012</u></b> <b><u>Approp.</u></b>	<b><u>2012</u></b> <b><u>Estimate</u></b>	<b><u>2013</u></b> <b><u>Estimate</u></b>	<b><u>2012-2013</u></b> <b><u>% Change</u></b>
Average Monthly Enrollment	72,211	65,005	73,473	73,473	0.0%
Average Monthly Grant	\$175.09	\$180.65	\$175.09	\$179.45	2.5%
<b>Funds in Millions</b>					
General Funds	\$0.2	\$7.1	\$7.1	\$51.2	617.3%
<b>Total Funds</b>	<b>\$151.1</b>	<b>\$140.9</b>	<b>\$154.4</b>	<b>\$158.2</b>	<b>2.5%</b>

Source: Department of Human Resources; Department of Legislative Services

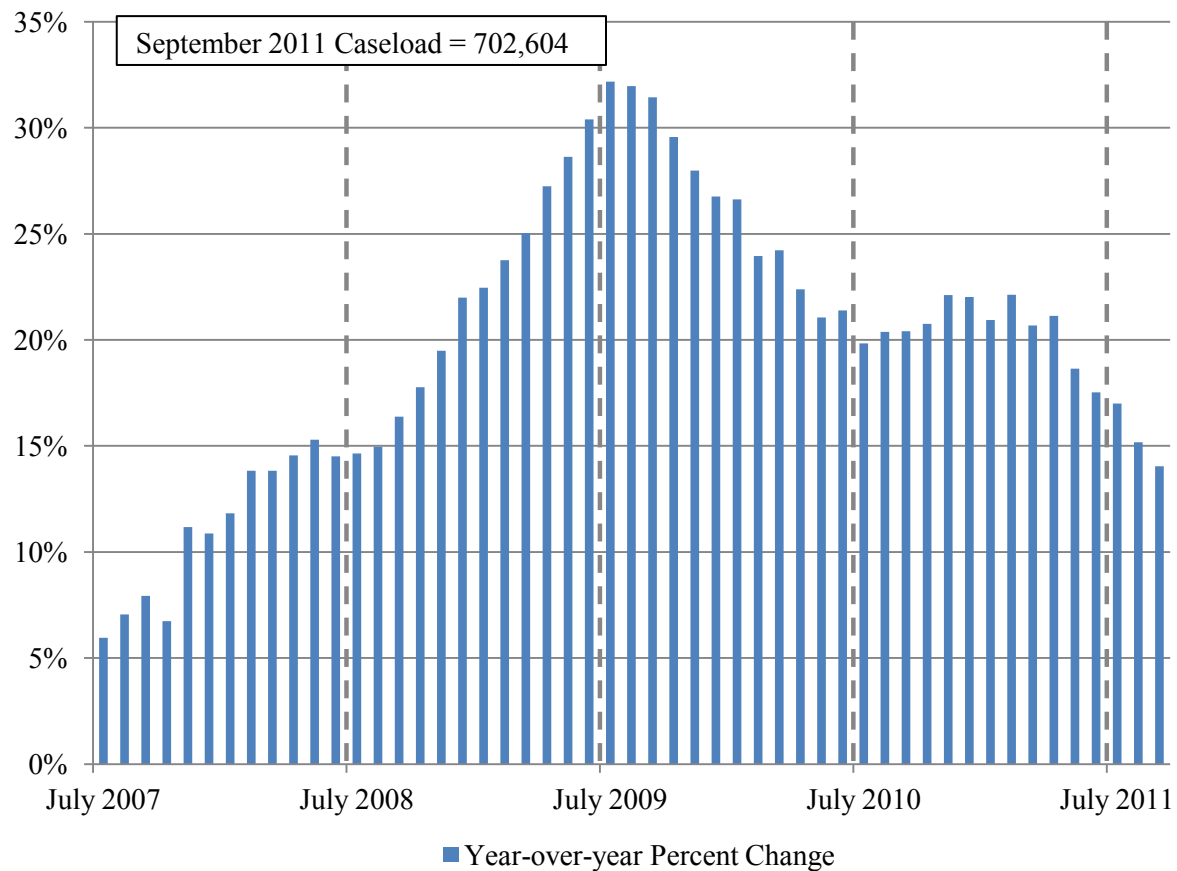
The estimated average monthly TCA grant amount is estimated to increase by 2.5% in fiscal 2013 in order to meet the statutory requirement that the combined value of the TCA and SNAP benefits be no less than 61.0% of the Maryland Living Level.

DLS estimates that the fiscal 2012 budget for TCA is \$13.5 million short of the need based on the estimated caseload level. In the past, funding shortfalls could be covered using TANF dollars due to the TANF fund balance that was carried forward from year to year. That TANF balance was exhausted in fiscal 2010, however, which means a general fund deficiency appropriation will be needed to cover the expected fiscal 2012 shortfall. Furthermore, as shown in Exhibit 1, general fund support will need to increase dramatically in fiscal 2013.

### **Supplemental Nutrition Assistance Program Caseload Trends**

The weak economic climate, combined with increased outreach efforts, has led to steady increases in the number of SNAP recipients over the past three and a half years. As shown in **Exhibit 2**, the caseload grew at an increasing rate in fiscal 2008 and 2009 and continued to grow, albeit at a slower rate, in fiscal 2010 and 2011. In July 2007, there were 324,220 people receiving food stamp assistance. By September 2011, this number had grown to 702,604. This 100% federally funded benefit resulted in over \$993 million in spending in Maryland in fiscal 2011.

**Exhibit 2**  
**Supplemental Nutrition Assistance Program Caseload**  
**July 2007-September 2011**



Source: Department of Human Resources; Department of Legislative Services



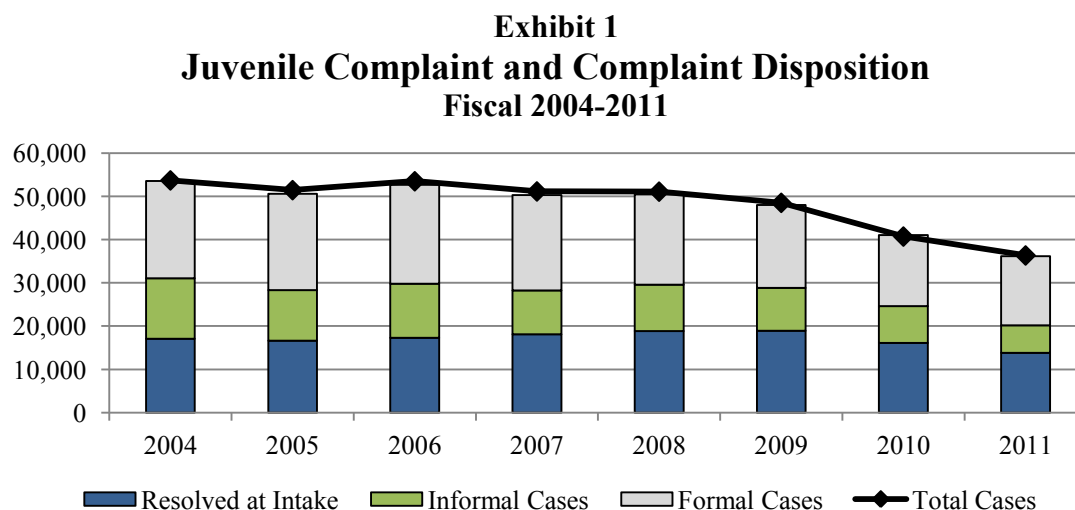
# Social Programs

## Department of Juvenile Services Population and Financing Trends

Department of Juvenile Service caseloads continue to fall, although the number of cases requiring formal court action is falling at a much lower rate. In contrast, secure pending placement and committed placements generally increase in fiscal 2011 compared to fiscal 2010. The department also continues to face staffing and budget issues.

### General Population Trends

**Exhibit 1** details the total number of complaints received by the Department of Juvenile Services (DJS) in recent years, as well as complaint disposition.



Note: Total complaints typically are 1 to 2% higher than the sum of those resolved at intake and the informal and formal caseload. The difference relates to jurisdictional issues or cases in which a decision is not recorded.

Source: Department of Juvenile Services; Department of Legislative Services

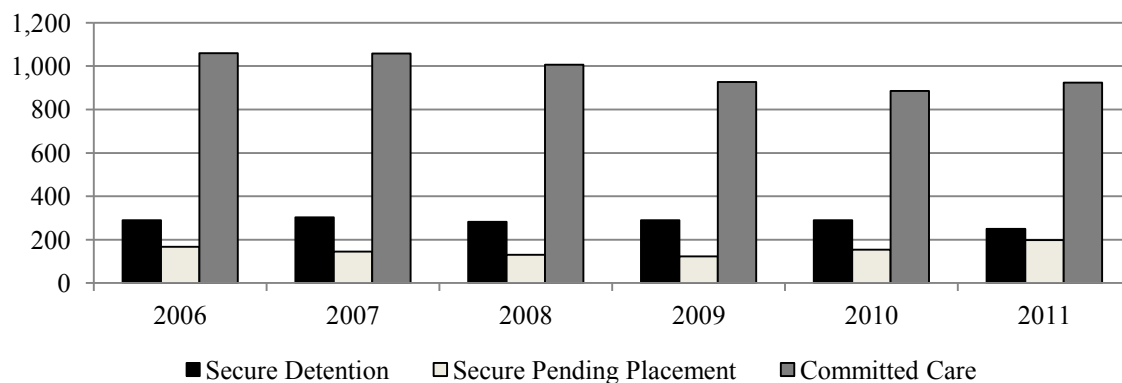
- The total number of complaints continues to decline. DJS handled less than 40,000 complaints for the first time in nearly a decade. The roughly 36,000 complaints in fiscal 2011 reflect an 11% reduction compared with fiscal 2010.
- Both those cases resolved at intake and those that require some form of intervention but do not rise to the level of court intervention (the informal caseload) continued to fall in fiscal 2011, by 14 and 25%, respectively. Similarly, these cases also accounted for a

smaller proportion of the total caseload, representing 38 and 18% of total complaint dispositions.

- Formal caseloads, those where DJS believes court intervention is required, continued to fall slightly between fiscal 2010 and 2011 (3%); however, as a percent of total case dispositions, formal caseloads accounted for the majority of dispositions in fiscal 2011, increasing from 40 to 44%.

In terms of youth requiring out-of-home placements, **Exhibit 2** illustrates trends for certain pre- and post-disposition residential placements.

**Exhibit 2**  
**Selected Average Daily Population Trends**  
**Department of Juvenile Services**  
**Fiscal 2006-2011**

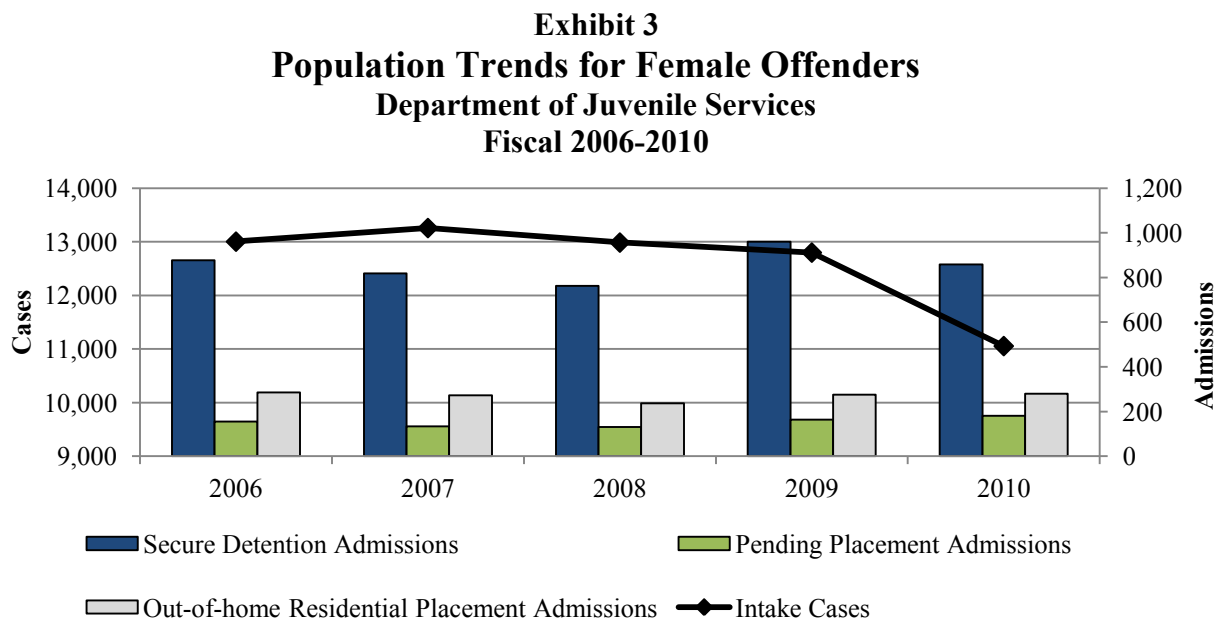


Source: Department of Juvenile Services; Department of Legislative Services

- Consistent with the reduction in complaints, the utilization of secure detention facilities for predisposition youth declined in fiscal 2011 to an average daily population of 250 youth.
- The number of post-disposition youth held in secure detention facilities pending a permanent residential placement continues to increase for a second consecutive year. The average population in fiscal 2011 was 198 youth pending placement, a nearly 30% increase over fiscal 2010, and the highest pending placement population in the last six fiscal years.
- After declining for five consecutive years, the average daily population of youth in committed residential placement increased in fiscal 2011 by slightly more than 4% to 924 youth. Of those 924 youth in committed residential placement, 116 youth were placed out-of-state.

## Female Offenders

**Exhibit 3** illustrates a variety of population trends for female offenders involved in the DJS system, utilizing data from an assessment conducted by the department in an attempt to evaluate gaps in service delivery among the genders.



Source: Department of Juvenile Services; Department of Legislative Services

- Intake cases and the utilization of secure detention for female offenders fell significantly in fiscal 2010, by 14 and 10%, respectively. Between fiscal 2006 and 2010, the most common disposition for female offenders was to resolve the case at intake (49%). For male offenders, the most common disposition was to formalize the case (48%).
- Pending placement admissions for female offenders increased for the second consecutive year, increasing by 11% in fiscal 2010. Between fiscal 2006 and 2010, pending placement admissions for female offenders increased by 17%.
- Between fiscal 2006 and 2010, out-of-home residential placement admissions for female offenders declined by approximately 2%. Out-of-home residential placement admissions for male offenders declined by approximately 9% during the same time period. In an effort to address a shortage of in-state committed bed space for female offenders, DJS is in the process of relocating the committed program at the Waxter Children's Center in Anne Arundel County to the J. DeWeese Carter Youth Facility in Kent County. Prior to the relocation, the Waxter facility had received criticism for comingling secure detention,

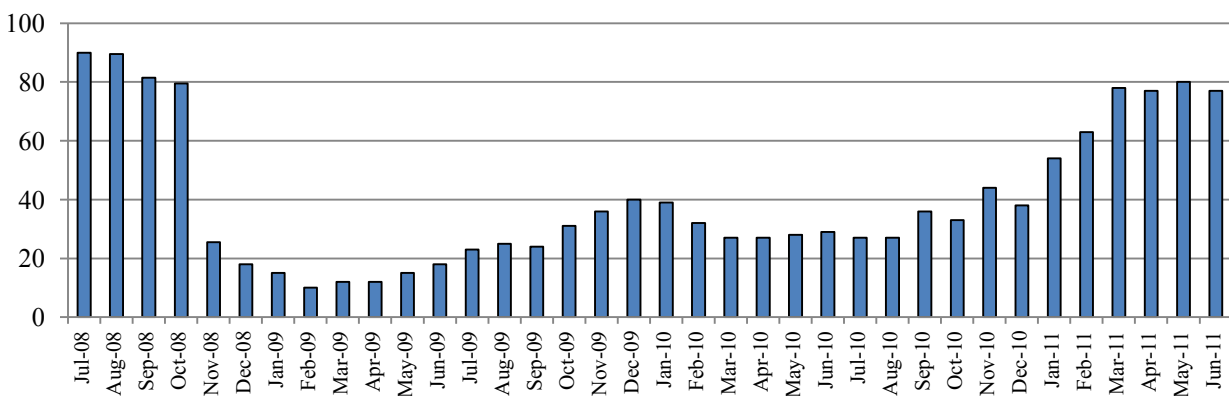


pending placement, and committed female populations. In addition, the facility was criticized for a lack of adequate space to properly deliver services. The new program at J. DeWeese Carter Youth Facility, a 15-bed facility, will focus solely on treatment services for female offenders in committed residential placements. DJS anticipates completing the relocation in November 2011.

## Financial Trends – Staffing Concerns

Despite falling populations, overtime levels at many DJS facilities are projected to be much higher than budgeted. The fiscal 2012 appropriation for employee overtime is approximately \$4.2 million less than the level of funding required for fiscal 2011. **Exhibit 4** provides monthly vacancy data for direct care staff in DJS facilities over the past three fiscal years.

**Exhibit 4**  
**Facility Direct Care Staff Monthly Vacancies**  
**Department of Juvenile Services**  
**Fiscal 2008-2011**



Source: Department of Juvenile Services; Department of Legislative Services

- Over the course of fiscal 2011, the vacancy rate for facility direct care staff has increased from 6 to 18%.
- DJS believes the implementation of centralized hiring blitzes, expanded training opportunities, and creating a qualified applicant pool will improve recruitment and retention for direct-care employees.

## **Social Programs**

### **Funding of Home Energy Programs**

<p><b>The growth in demand for energy assistance programs is slowing, but funding availability is still inadequate leading the Department of Human Resources to reduce benefits.</b></p>
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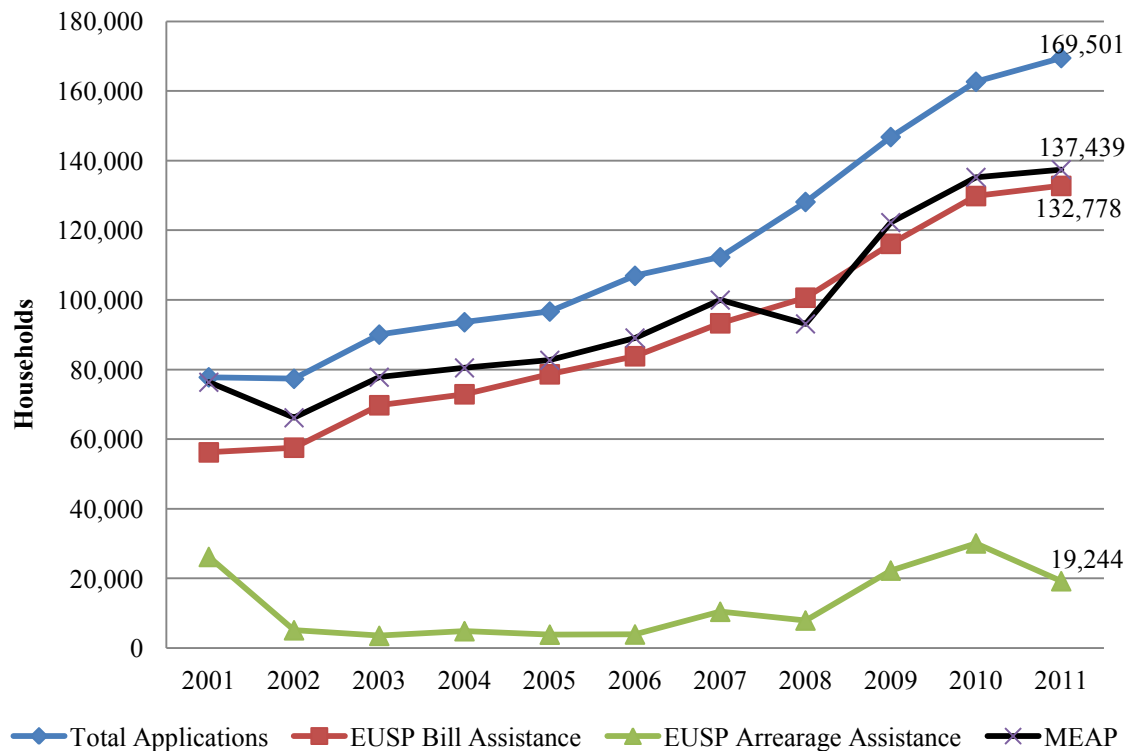
### **Background**

The Department of Human Resources (DHR) operates two energy assistance programs through the Office of Home Energy Programs (OHEP). The Maryland Energy Assistance Program (MEAP) operates with funds from the federal Low Income Home Energy Assistance Program (LIHEAP) and provides bill payment, crisis assistance, and furnace repair/replacements for a variety of energy sources. The Electric Universal Service Program (EUSP), funded primarily through a surcharge on the bills of electric customers and revenue from the Regional Greenhouse Gas Initiative (RGGI) carbon dioxide emission allowance auctions, provides bill payment and arrearage assistance to electric customers. These programs serve households with incomes at or below 175% of the federal poverty level. Arrearage assistance is available to households only once every seven years.

### **Households Receiving Benefits**

The energy assistance programs have generally experienced growth in the number of applications and households receiving bill payment assistance benefits in each year since fiscal 2002, as shown in **Exhibit 1**. The growth has been particularly dramatic since fiscal 2006 due to such factors as rapidly increasing utility costs, the effects of the recession, and changes in the eligibility limit. Recently the growth has begun to moderate. Although not apparent in Exhibit 1, applications are down slightly for MEAP (-1.9%) and EUSP bill assistance (-1.7%) in the first quarter of fiscal 2012, compared to the same time period in fiscal 2011.

**Exhibit 1**  
**Application and Benefit Provision History**  
**Fiscal 2001-2011**



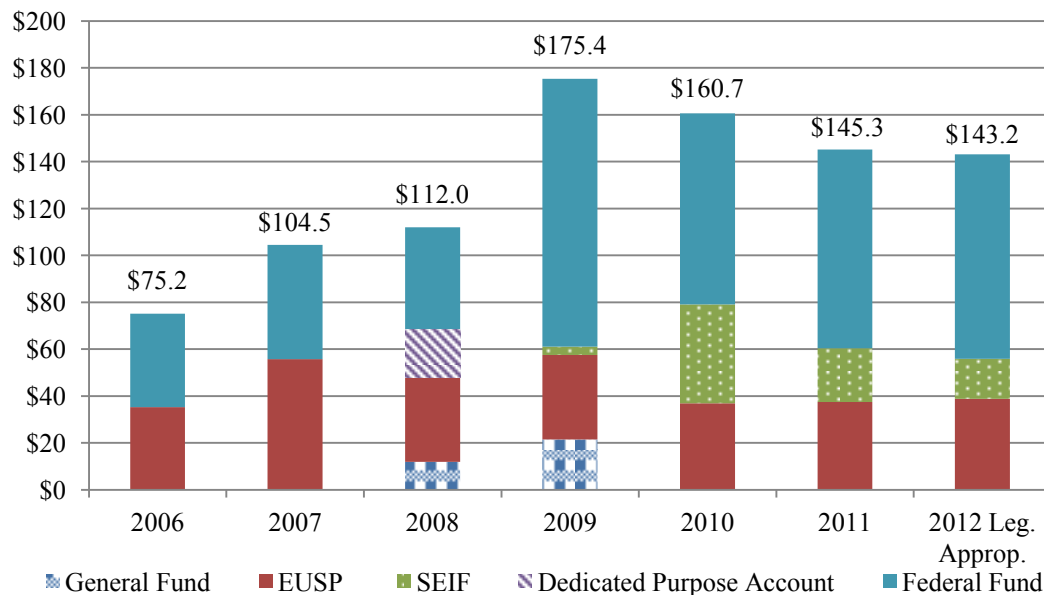
EUSP: Electric Universal Service Program  
 MEAP: Maryland Energy Assistance Program

Source: Department of Human Resources

## Funding Trends

As shown in **Exhibit 2**, coinciding with the increase in applications and households receiving benefits, the expenditures of OHEP increased substantially from fiscal 2006 to 2009. However, since fiscal 2009, the expenditures have decreased due primarily to changes in the availability of various fund sources and resulting changes in benefits. Although the fiscal 2012 legislative appropriation is only slightly lower than the fiscal 2011 expenditures, the appropriation overstates the funding likely to be available to the program in that year.

**Exhibit 2**  
**Office of Home Energy Programs Funding and Expenditure History**  
**Fiscal 2006-2012**  
**(\$ in Millions)**



EUSP: Electric Universal Service Program  
 SEIF: Strategic Energy Investment Fund

Source: Governor's Budget Books

### Low Income Home Energy Assistance Program

The majority of funds received by the State from LIHEAP are from the block grant formula. Additional LIHEAP support may also be available to the State through allocations of emergency contingency funds, leveraging grants, or other sources. Benefit expenditures, carryover funding, and differences in the State and federal fiscal year typically result in differences between LIHEAP expenditures and the State's share of the appropriation.

The State's LIHEAP allocation remained relatively steady from federal fiscal 1985 to 2007, between \$20 and \$36 million in nearly all years. In each year of federal fiscal 2009 and 2010, the appropriation for LIHEAP was \$5.1 billion nationally, the highest level in program history. The national appropriation in fiscal 2011 was reduced slightly from the prior years at \$4.7 billion. In these three years, Maryland's allocation far exceeded historic levels.

As of this writing, the federal fiscal 2012 appropriation for LIHEAP has not been determined. DHR's fiscal 2012 appropriation assumes that approximately \$88.2 million would be available to Maryland from LIHEAP. Under President Obama's budget proposal, the LIHEAP appropriation would be approximately \$2.6 billion providing Maryland an estimated \$31.3 million. Senate and House proposals are somewhat higher at \$3.6 billion and \$3.4 billion respectively, which according to the Congressional Research Service would provide Maryland approximately \$54.1 million or \$73.8 million. However, under any of these proposals, Maryland likely will receive an allocation far below the anticipated federal fund appropriation level.

### **Strategic Energy Investment Fund**

Revenue from RGGI auctions are held in the Strategic Energy Investment Fund (SEIF). Chapters 127 and 128 of 2008 allocated 17% of the funds from RGGI auctions to EUSP and other electricity assistance. However, under reallocations of the revenue from RGGI auctions contained in the Budget Reconciliation and Financing Act (BRFA) of 2009 and 2011, energy assistance receives 50% of the revenue, an allocation that is scheduled to continue through fiscal 2014.

However, SEIF available for energy assistance was less than originally anticipated in fiscal 2010 and 2011, and a similar trend is likely in fiscal 2012. Revenue from RGGI auctions has generally declined as allowance prices have fallen from a high of \$3.51 to the minimum accepted price (currently \$1.89) and auctioned allowances have failed to sell in four of the last five auctions. In the most recent auction, only 18% of auctioned allowances sold resulting in Maryland receiving less than half of the revenue assumed in budget development. Revenue is uncertain going forward due to the ongoing program review process and the potential for rebounding demand with the beginning of the second compliance period in calendar 2012.

### **Benefit Changes and Issues for Fiscal 2012 and Beyond**

DHR has taken steps to contain costs in the programs, given that the number of households served has increased, while available funding is likely to decrease substantially. The fiscal 2012 *EUSP Proposed Operations Plan* submitted to the Public Service Commission indicated that DHR plans to cap spending on arrearage assistance at \$5.0 million, compared to nearly \$17.9 million in fiscal 2011 and \$30.8 million in fiscal 2010. This is likely to lead to some households being unable to receive arrearage assistance.

In addition, DHR has reduced the percentage of the electric bill paid through the EUSP bill assistance program. Through the first quarter of fiscal 2012, average benefits have declined for each benefit level compared to the same time period in fiscal 2011, with the lowest income households receiving the largest average benefit reduction (29.2%). Information on MEAP benefits is not currently available, but information on DHR's website for potential applicants indicates the benefits will be lower. These reductions follow previous declines in benefits in both bill assistance programs for some fuel types and income levels in fiscal 2010 and again in

fiscal 2011. Lower bill benefits could lead to increases in bill arrearages and terminations of service.

It is unclear whether the adjustments DHR has made will be enough to serve all eligible households that apply in fiscal 2012, particularly given the information released in October 2011 in the Energy Information Administration's *Short-Term Energy and Winter Fuels Outlook* which projects average household heating expenditures nationally to increase for natural gas, propane, and heating oil and decrease only slightly for electricity. This forecast is driven in part by the forecasted temperatures, which are expected to be warmer than the previous winter in most regions of the United States.

In response to the funding uncertainties and growing demand, committee narrative in the 2011 *Joint Chairmen's Report* requested that DHR submit a plan for long-term funding sustainability of EUSP and MEAP and consider options to adjust eligibility, benefit levels, and the ratepayer surcharge. As of this writing the response has not been submitted; however, some changes in these areas may be necessary to respond to the funding outlook.



# Social Programs

## Social Impact Bonds

**A new financing tool for social programs, social impact bonds, is part of the President's proposed fiscal 2012 budget. Originating in Europe, social impact bonds may offer a creative outcome-based approach to funding some social programming. However, use of such bonds would require very careful crafting and measurement of outcomes.**

### Background

Social Impact Bonds (SIB), also known as pay-for-success bonds, are a relatively new financing model that shows promise both as a fund source for improving social outcomes and as a mechanism for encouraging innovation in addressing social problems. The model involves a social impact bond issuing entity raising funding from private investors (typically foundations and philanthropically inclined individuals) and using the funds to pay for programs to achieve specific social outcomes. If the programs are successful and established measures are met, government pays back the investors at a specified rate of return. If the programs are not successful in meeting the measures, government pays nothing. SIBs are not “typical” bonds since all of the investor funding is at risk.

Unlike conventional government social programs which tend to be prescriptive – governments contracting for specific services to be provided – in the SIB model, government defines the desired outcome(s) and the SIB issuer is responsible for selecting the programs or services that will be used to achieve the desired result(s). Because payment is dependent on achieving specific outcomes, SIB issuers have a vested interest in constantly evaluating the effectiveness of the programs and services being utilized and making adjustments as necessary to improve performance.

The first SIB funded project is underway in the United Kingdom where the Justice Ministry contracted with the social investment firm, Social Finance, to reduce recidivism rates of short-sentence offenders leaving the Peterborough Prison over a six-year period. Approximately 60.0% of short-sentence prison leavers re-offend within one year of release. Reducing the recidivism rate will reduce prison system costs and have other social benefits in the form of higher employment rates and increased involvement by released prisoners in the lives of their children. If Social Finance achieves at least a 7.5% decrease in re-offending compared to a control group of short-sentence prison leavers, it will receive a return. Drops in re-offending beyond 7.5% will result in an increasing rate of return up to a maximum of 13.0% per year over an eight-year period.

Social Finance raised approximately 4.9 million pounds (\$7.9 million) from investors and has contracted with social sector service organizations to offer programming and support to



prison leavers and their families to address the causes of their re-offending. Services are provided both pre- and post-release.

## **Possible Uses**

Although the first SIB project of record is addressing prisoner recidivism, there is a wide range of potential issues that could be addressed through SIBs. Possible areas of use mentioned in discussions of SIBs include reducing homelessness, increasing job placement for welfare recipients, improving reading ability and other educational readiness factors for low-income and disadvantaged children, and reducing hospital/emergency room usage by the elderly or those with chronic illnesses.

## **Components for a Successful Program**

While additional funding to address social problems is attractive, SIBs are not a viable funding mechanism in many instances. The following challenges to constructing a successful SIB funded program were noted in a report on SIBs by the Center for American Progress:

- interventions must have sufficiently high net benefits – since some programs are likely to fail, successful programs must have a rate of return high enough to allow investors to earn their required rates of return;
- interventions must have measurable outcomes – performance-based payments by definition must have measurable outcomes;
- treatment populations must be well-defined up front – program evaluation and properly constructing a performance-based contract require a treatment population that is clearly defined in a way that cannot be manipulated by the service providers;
- impact assessments must be credible – program evaluation must be structured to ensure a way of assessing what the outcomes would have been in the absence of the program; and
- unsuccessful performance must not result in excessive harm – since bondholders could have an incentive to shut down operations if it appears performance targets will not be met, it is imperative that SIB contracts anticipate program failure and provide for managing such situations.

## **Developments in the United States**

Interest in SIBs in the United States is high as evidenced by media coverage and numerous articles in social science publications and on social science websites. There have also been some concrete actions moving toward utilization of SIBs. The President's proposed budget for federal fiscal 2012 includes \$100 million for pilot projects utilizing the SIB model. Social Finance has established a U.S. based nonprofit of the same name to facilitate development of SIBs, and this new nonprofit recently announced a two-year commitment to develop and launch \$100 million in SIBs in the United States. In May 2011, Massachusetts issued a request for information as the start of a process to develop a procurement for social financing services. Given this level of interest, SIBs could soon be put to use in addressing a myriad of social problems.



# Transportation

## Transportation Financing

**A Blue Ribbon Commission on Transportation Funding was convened to develop recommendations for meeting State transportation demands. The commission's November 2011 final report makes several recommendations, including raising \$870 million in net new annual revenues for transportation by increasing the motor fuel tax, vehicle registration fees, and other transportation revenues.**

### Background

Chapters 525 and 526 of 2010 established the Blue Ribbon Commission on Transportation Funding. The commission was tasked with reviewing, evaluating, and making recommendations on a variety of issues, including (1) the current State funding sources and structure of the Transportation Trust Fund (TTF); (2) short- and long-term transit and highway construction and maintenance funding needs; (3) options for public-private partnerships to meet transportation funding needs; (4) the structure of regional transportation authorities and their ability to meet transportation needs; and (5) options for sustainable, long-term revenue sources for transportation. During the September 2010 to October 2011 period, the 28-member commission held 14 meetings and received feedback from numerous experts and affected parties.

After submitting an interim report in December 2010 that summarized its preliminary findings, the commission released another report in February 2011 that made several short-term transportation funding recommendations, including (1) adopting an amendment to the Maryland Constitution prohibiting transfers from TTF to nontransportation purposes, except in specified fiscal emergencies; (2) retaining the existing portion of sales and corporate tax revenue dedicated to TTF; and (3) restoring highway user revenue to local governments. While bills implementing some of these recommendations were considered during the 2011 legislative session, none passed. However, the Budget Reconciliation and Financing Act of 2011 increased TTF revenues by approximately \$64 million starting in fiscal 2012 and required that any transfers from the State share of TTF revenues be repaid.

### The Commission's Final Recommendations

The commission's November 1, 2011 final report recommends, among other things, protecting and increasing transportation funding and facilitating funding partnerships. **Exhibit 1** summarizes key recommendations included in the final report.

## **Exhibit 1**

### **Summary of the Commission's Final Recommendations**

#### **Protect and Increase Transportation Funding**

- Amend the Maryland Constitution to prohibit transfers from TTF to nontransportation purposes, except in fiscal emergencies.
- Raise \$870 million in new annual revenues for transportation by, for example, increasing (1) the motor fuel tax over three years by five cents per gallon per year and then indexing it to inflation; (2) vehicle registration fees by 50%; and (3) other transportation revenues.
- Restore the allocation of annual highway user revenue aid to local governments.
- Increase transportation bonding capacity commensurate with revenue adjustments.
- Remove the cost-recovery cap for Motor Vehicle Administration fees.
- Consider establishing tolls on new or expanded transportation facilities in conjunction with variable pricing techniques.

#### **Support Transit**

- Reach the transit cost recovery ratio goal of 35%.
- Regularly adjust transit fares and eliminate nonpaying ridership.

#### **Support State Growth Policies**

- Collaborate with local governments to ensure local plans reflect State growth policies.

#### **Capture Value Created by Transportation Investments**

- Integrate value capture analysis into transportation decision making.
- Seek authority to apply tax increment financing support to highway project development.

**Exhibit 1 (continued)**  
**Summary of the Commission's Final Recommendations**

**Facilitate Transportation Financing Partnerships**

- Establish centralized enabling legislation for public-private partnerships (P3) outlining efficient and timely legislative review.
  - Revise the current transportation P3 process.
  - Assess the feasibility of loaning State funds to local governments and private sponsors to facilitate transportation investments.
- 

**Policy Implications**

The growing demand for State and local transportation projects coupled with the uncertainty of federal transportation revenues is likely to result in significant attention being given to transportation funding sources, levels, and strategies during the 2012 legislative session. Legislation implementing some or all of the commission's final recommendations is likely during the 2012 legislative session.



# Transportation

## History of Transfers Between the Transportation Trust Fund (State Share) and the General Fund

**While \$574.1 million has been transferred from the State share of the Transportation Trust Fund to the general fund since 1984, plans are in place for that amount to be more than repaid.**

As the need for increased transportation revenues has been discussed, one issue that has arisen is the transfer of revenues from the Transportation Trust Fund (TTF) to the general fund and the need for a “lockbox” on transportation revenues. **Exhibit 1** shows the history of transfers between the TTF (State share) and the general fund. The exhibit shows that while transfers from the State share of the TTF to the general fund have occurred, plans are in place for that amount to be more than repaid.

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### Exhibit 1 Transfers Between the Transportation Trust Fund (State Share) and the General Fund

<u>Fiscal Year</u>	<u>TTF to General Fund</u>	<u>General Fund/GO Bonds to TTF</u>
1984	\$29.0 million (Budget Shortfall)	\$0
1986	\$100.0 million (Savings and Loan Crisis)	\$0
1987	\$0	\$15.0 million (1984 and 1986 repayment)
1988	\$0	\$30.0 million (1984 and 1986 repayment)
1989	\$0	\$36.0 million (1984 and 1986 repayment)
1990	\$0	\$36.0 million (1984 and 1986 repayment)
1991	\$22.2 million (Budget Shortfall)	\$12.0 million (1984 and 1986 repayment)
1992	\$48.0 million (Budget Shortfall)	\$0
1997	\$0	\$6.0 million (failure of fuel efficiency legislation)
1998	\$0	\$21.0 million (failure of fuel efficiency legislation)
1999	\$0	\$15.0 million (failure of fuel efficiency legislation)



**Exhibit 1 (continued)**

<b><u>Fiscal Year</u></b>	<b><u>TTF to General Fund</u></b>	<b><u>General Fund/GO Bonds to TTF</u></b>
2001	\$0	<ul style="list-style-type: none"> <li>• \$25.1 million (Woodrow Wilson Bridge/Addison Road Metrorail Extension)</li> <li>• \$10.2 million (land adjacent to Greenbelt Metro)</li> </ul>
2002	\$0	\$23.1 million (Transit Initiative)
2003	\$160.0 million (Budget Shortfall)	\$0
2004	\$154.9 million (Budget Shortfall)	\$0
2005	\$0	\$0
2006	\$0	\$50.0 million (ICC payment for \$315.0 million)
2007	\$0	\$53.0 million (ICC payment for \$315.0 million)
2010	\$0	\$55.0 million (ICC payment for \$315.0 million)
2011	\$0	\$89.3 million (ICC payment for \$315.0 million)
2012	\$60.0 million (Budget Shortfall)	\$46.2 million (ICC payment for \$315.0 million)
2013	\$0	\$21.5 million (ICC payment for \$315.0 million)
2014	\$0	\$26.0 million (\$60.0 million repayment)
2015	\$0	\$25.0 million (\$60.0 million repayment)
2016	\$0	\$21.0 million (\$60.0 million repayment)
<b>Total Paid</b>	<b>\$574.1 million</b>	<b>\$616.4 million</b>

GO: general obligation

ICC: InterCounty Connector

TTF: Transportation Trust Fund

Source: Department of Legislative Services

# Transportation

## Oversight of Public-private Partnerships

**To date, Maryland has had mixed success with public-private partnerships and the legislature continues to grapple with its oversight of these projects. Chapters 640 and 641 of 2010 created a joint legislative and executive commission to recommend a framework for legislative oversight.**

### Background

Public-private partnerships (P3) are contractual agreements formed between the public and private sectors that allow for greater private-sector participation in the financing, construction, operation, and maintenance of public infrastructure. The broad definition of P3s includes a full spectrum of projects with varying degrees of risk, responsibility, and reward transfers between sectors. Although P3s have been used globally for several decades, the United States is a relative newcomer to the arena. To date, Maryland has utilized P3s on a limited basis and with mixed success.

- In 2010, the Maryland Port Administration entered into a 50-year lease of Seagirt Marine Terminal to a private entity in exchange for the construction and equipping of a 50-foot berth valued at roughly \$100 million, an upfront payment of \$140 million, and annual rental fees and revenue sharing. Viewed by many in the port industry as a success, that determination may be premature only 2 years into a 50-year contract.
- For several years, the Department of General Services and the Maryland Department of Transportation have been working on a P3 for a major redevelopment of State Center in Baltimore City. The \$1.5 billion project will transform the area from several State office buildings and surface parking lots into a mixed-use development with office, retail, and residential space. The project has progressed more slowly than expected due to concerns from the legislature and a lawsuit that currently has the project at a standstill.
- A request for proposals for the redevelopment, operation, and maintenance of two travel plazas along the median of Interstate 95 was cancelled when it became too unwieldy with addendums and details. A new request for proposals was issued in June 2011, and the Maryland Transportation Authority is currently receiving and reviewing proposals.

## **Legislative Oversight of P3s**

P3 agreements are negotiated and executed by Executive Branch agencies, often with little or no oversight or involvement from the General Assembly. P3s involve significant fiscal considerations, including capital and operating leases that obligate the State to long-term budget commitments, potential impacts on State debt affordability, the disposition of State assets, and the assignment of future revenues to a private-sector entity that would otherwise have accrued to the State. These effects on State assets, budgets, and debt make legislative oversight critical.

Chapter 383 of 2007 created a legislative notification process for certain transportation P3s. However, this notification process only addressed certain transportation P3 projects, and did not include all types of transportation projects nor did it include nontransportation projects. These shortcomings became apparent in subsequent years when it was determined that the Seagirt, State Center, and travel plaza P3s described earlier all fell outside the purview of the notification process. Instead, legislative notification was required only on a project-specific basis through the annual budget process. This method created uncertainty and confusion for both State agencies and the private sector.

Chapters 640 and 641 of 2010 created a working definition of P3s in Maryland, established a legislative notification process for the use of P3s by any State agency, and created the Joint Legislative and Executive Commission on Oversight of Public-private Partnerships. Based on this legislation, the current statutory definition of a P3 is a sale or lease agreement between a unit of State government and a private entity under which the private entity assumes control of the operation and maintenance of an existing State facility; or the private entity constructs, reconstructs, finances, or operates a State facility or a facility for State use and will collect fees, charges, rents, or tolls for the use of the facility.

Chapters 640 and 641 also created a review and notification process for P3s. It requires a series of annual reports as well as reports at certain key points in the process of soliciting and approving a P3 project. Annual reports include a report on any P3 projects under consideration, a status report of any P3 projects in place, and a report from any State agency that issued conduit debt for a P3. In addition, the Acts require reports at two key points in the process to solicit and select a private-sector partner. First, at least 45 days before issuing a notice of solicitation for a P3, an agency must submit a summary of the proposed P3 to the State Treasurer and the legislative budget committees. Second, at least 60 days before entering into a P3, an agency must submit the proposed agreement to the State Treasurer, who has 30 days to analyze the impact of the agreement on the State's capital debt affordability limits. This analysis, along with the proposed agreement, must then be submitted to the legislative budget committees for 30 days of review and comment. At that time, the agreement may go to the Board of Public Works for final approval.

The notification provisions required under Chapters 640 and 641 are intended as a short-term measure until the commission develops recommendations for a more comprehensive framework for P3s. The commission is chaired by Lieutenant Governor Anthony G. Brown and includes four members of the legislature; the State Treasurer; a representative of the private

sector; and the secretaries, executive directors, or presidents of several State departments, agencies, and institutions of higher education. The commission will submit its final report in December 2011 and will include recommendations for a broader P3 enabling statute that includes a comprehensive review and approval framework.



# Transportation

## Overview of the Draft *Consolidated Transportation Program*

The Maryland Department of Transportation's 2012 draft *Consolidated Transportation Program* lists all capital projects funded in the current fiscal year and those planned for the next five years. Spending over the six years totals \$9.7 billion, a \$194.5 million increase from 2011; however, several major capital projects remain only partially funded.

### Overview

The *Consolidated Transportation Program* (CTP) is Maryland's six-year capital budget for transportation projects. It is updated annually and includes all major and minor capital projects that the department, its modal administration, and the Washington Metropolitan Area Transit Authority (WMATA) are undertaking in the current year and over the next five-year planning period. Capital projects for the Maryland Transportation Authority are also included in the CTP but are excluded from this analysis. **Exhibit 1** compares six-year spending contained in the 2011 CTP to the 2012 draft CTP.

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#### Exhibit 1 Comparison of Six-year Capital Spending Fiscal 2011-2017 (\$ in Millions)

	<u>2011-2016</u> <u>CTP</u>	<u>2012-2017</u> <u>Draft CTP</u>	<u>Change</u>	<u>Percent</u> <u>Change</u>
Special Funds	\$5,019.7	\$5,413.5	\$393.8	7.8%
Federal Funds	3,505.4	3,360.1	-145.3	-4.1%
Other Funds *	960.7	906.6	-54.1	-5.6%
<b>Total Funds</b>	<b>\$9,485.8</b>	<b>\$9,680.3</b>	<b>\$194.5</b>	<b>2.1%</b>

CTP: *Consolidated Transportation Program*

\* Other funds include funds from customer and passenger facility charges and certain types of federal aid that do not pass through the Transportation Trust Fund.

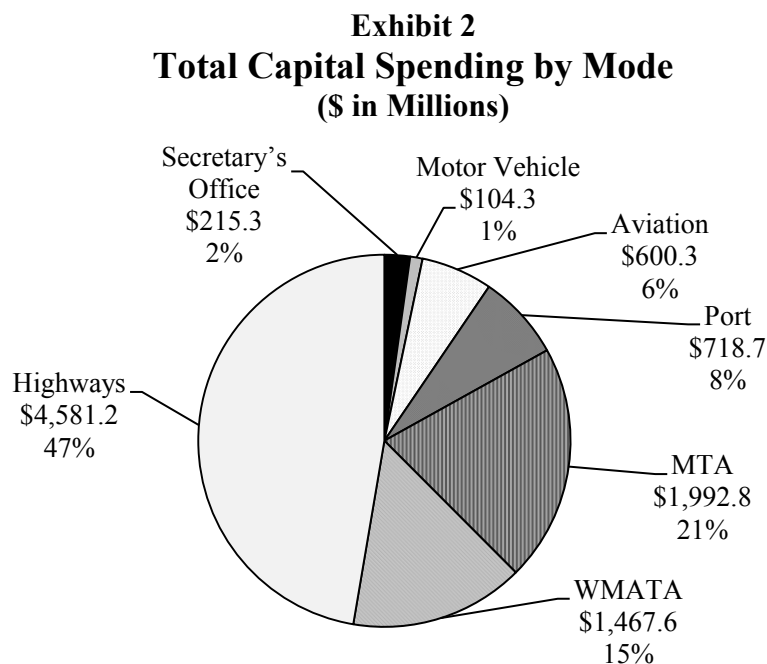
Source: Maryland Department of Transportation, 2011 Final *Consolidated Transportation Program*, 2012 Draft *Consolidated Transportation Program*

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The total funding level in the 2012 draft CTP increases by \$194.5 million (2.1%) from the 2011 CTP. This net increase is due to the following:

- a \$393.8 million increase in special funds is due to fiscal 2011 revenues coming in higher than forecasted, the expected rebound in transportation revenues following a national recession, and revenue actions taken during the 2011 session;
- a \$145.3 million decrease in federal funds is due in large part to conservative estimating of federal funds in future years due to uncertainty with how Congress will address deficit reduction. Estimates of federal aid decrease from \$759.1 million in fiscal 2013 to \$336.8 million in fiscal 2017; and
- a \$54.1 million decrease in other funds, which is largely the result of declines in pass-through federal funding to WMATA and forecasted declines in passenger facility charges.

**Exhibit 2** shows total capital spending for the entire six-year period by mode. As is typical, the State Highway Administration (SHA) receives just under half of total capital funding, and transit (including both the Maryland Transit Administration (MTA) and WMATA) receives just over one-third of the funding.



**Total Capital Spending: \$9.7 Billion**

WMATA: Washington Metropolitan Area Transit Authority

Source: Maryland Department of Transportation, 2012 Draft *Consolidated Transportation Program*

## **Major Project Changes**

In total, \$268.0 million worth of projects were added to the 2012 draft CTP. Of that amount, eight projects at a cost of \$164.2 million were added to the construction program, and three projects totaling \$1.0 million were added to the development and evaluation program. In addition, two projects were moved from the development and evaluation program to the construction program at a cost of \$71.9 million. One project with a cost of \$30.9 million was moved from the construction program to the development and evaluation program.

Major project additions to the construction program include a \$28.2 million bus maintenance facility for MTA; \$50.9 million worth of stormwater projects in accordance with the State's Watershed Implementation Plan; improvements to certain bridges along interstates 68, 70, and 695 and US 15; improvements to the US 40 ramp over US 29; and statewide improvements to pedestrian access to transit stations.

Two SHA projects totaling \$71.9 million were moved from the development and evaluation program to the construction program. One project involves construction of an interchange from Interstate 95 to Contee Road in Prince George's County and the other involves Base Realignment and Closure (BRAC) intersections near Aberdeen Proving Grounds.

## **Major Projects Funded**

There are several projects totaling \$100.0 million or more in the draft CTP. These include:

- federally mandated improvements totaling \$346.6 million to the runways and runway safety areas at Baltimore/Washington International Thurgood Marshall Airport, scheduled for completion in 2016 and utilizing a variety of federal, State, and other funding;
- projects totaling \$407.2 million over the six-year planning period for the identification, evaluation, construction, operation, and monitoring of placement sites for material dredged from the State's shipping channels;
- ongoing improvements to the Maryland Area Regional Commuter (MARC) Camden, Brunswick, and Penn lines and overhaul and replacement of MARC coaches and locomotives totaling \$341.3 million over the six-year planning period, with roughly three-quarters of this funding coming from the federal government;
- a mid-life inspection and overhaul of light rail vehicles, purchase of replacement busses for State transit routes, and grants to locals for the replacement of locally operated transit system busses, equipment and facilities totaling \$450.9 million over the six-year planning period; and



- \$372.4 million over the six-year planning period for the planning, engineering, and right-of-way purchases for the Red Line, Purple Line, and Corridor Cities Transitway.

Several major initiatives will be impacting the capital program in the next several years and are not fully funded in the current capital program. These include:

- construction of three major transit lines, which currently have funding only for the planning stages and assume a match of 50% from the federal government, which may not materialize; and
- federally mandated environmental actions related to the State's Watershed Implementation Plan and efforts to clean up the Chesapeake Bay. The total cost for these projects through 2020 is estimated at approximately \$1.0 billion to \$1.5 billion; however, funding in the current CTP totals \$50.4 million.

# Economic Development

## Federal and State Job Creation Concepts

**Unemployment remains high across the United States and Maryland. There are now various government proposals that spur job creation. President Barack H. Obama has proposed the American Jobs Act, and Congressional Republicans have proposed the Jobs Through Growth Act. Governor Martin J. O'Malley has also expressed interest in State initiatives to promote job creation but has not yet provided any specific proposals.**

High unemployment rates across the country, reflecting a slow recovery from the 2008 recession, have resulted in much discussion at all levels of government on how to best spur job creation. At the federal level, the President put forth a number of job creation proposals in the American Jobs Act, and Republicans have supported alternatives in the Jobs Through Growth Act. In Maryland, specific legislation has not yet been offered, but many job creation ideas have been suggested.

### American Jobs Act

There are four main components of the American Jobs Act:

- **Tax Relief for Workers and Businesses** – reduces in Social Security payroll tax for workers and payroll tax for businesses in calendar 2012.
- **Job Retention of Teachers and First Responders** – provides \$35 billion to prevent teacher and first responder layoffs and to create new jobs in these sectors.
- **Job Creation through Investing in Infrastructure** – provides \$105 billion for infrastructure investments in schools, community colleges, transportation, and a nationwide public safety wireless network.
- **Assistance for the Unemployed** – extends unemployment benefits, and provides funding for various reemployment services and programs.

Maryland could receive direct payments of nearly \$1.6 billion under these proposals, with just over \$1.0 billion in capital spending for infrastructure investments and over \$500 million in operating spending for teacher and first responder job retention. Tax relief and assistance for the unemployed would provide benefits directly to Marylanders.

## Jobs Through Growth Act

Proposals in the Jobs Through Growth Act fall into five main categories:

- **Spending Reform** – requiring a balanced budget amendment to the Constitution and enacting statutory line item veto authority.
- **Tax Reform** – reducing the top income tax rates, encouraging repatriation of foreign earnings of American corporations, and ending required governmental withholding of 3% from payments to vendors.
- **Regulation Relief** – repealing the Affordable Care Act and the Dodd-Frank Act, capping malpractice awards, and curtailing various mandates and powers of federal regulatory agencies.
- **Promoting Domestic Energy Production** – expediting permitting and limiting powers of the Environmental Protection Agency.
- **Renewing Fast-track Process for Trade Agreements.**

To date, none of the components from either federal jobs creation proposal have been passed by Congress. A version of the American Jobs Act failed in the Senate, but provisions of the Act are likely to be taken up in other forms in the weeks ahead. Likewise, various parts of the Jobs Through Growth Act are likely to appear in various forms in the future.

## Maryland Job Creation Concepts

While there are no specific proposals or legislation for increasing employment through infrastructure spending, several options could warrant further consideration in the upcoming session:

- **Accelerate the General Obligation (GO) Bond Authorization Schedule and Use the Debt Capacity to Make Infrastructure Investments Now and Stimulate Job Creation** – Opportunities for additional capital investment include:
  - Public School Construction where requests for State funding support for fiscal 2013 exceed the *Capital Improvement Program* (CIP) level by \$395 million;
  - Department of General Services Facility Renewal Program, which currently has a \$100 million backlog of smaller deferred maintenance projects (less than \$1 million in total costs) that could be implemented quickly;

- University System of Maryland Facility Renewal Program, which has an estimated \$1.6 billion backlog of smaller projects;
  - construction projects for State agencies that have recently been deferred due to lower authorization levels for which design is or will be sufficiently complete to allow for accelerated funding over what is currently programmed in the CIP; and
  - small to mid-sized transportation projects that could be implemented quickly.
- 
- **Revenue Enhancement Which Could Both Increase the Availability of Pay-as-you-go (PAYGO) Funding and Increase the State's Bonding Capacity** – Since debt service is limited to 8% of revenues, increasing revenues provides more debt service capacity. The amount of additional capacity depends on how soon the debt is issued. The additional capacity is reduced if debt is issued sooner because the projects are accelerated.
  - **Make Greater Use of Alternative Delivery Methods** – Make greater use of alternative project delivery methods, such as design-build and construction management at risk, which can shorten the time it takes to design, construct, and deliver a project. Public-private partnerships, in particular for transportation infrastructure, can also expand capital spending.
  - **Limit the Use of GO Bond Replacement of Fund Transfers** – GO bonds not used as a source of special fund and PAYGO replacement would be available to support additional capital investments.



# Economic Development

## Impact of Public Infrastructure Investment on Jobs and the Economy

The Administration is considering a jobs proposal that could include accelerating infrastructure spending to promote job creation. Recent research on the impact of the American Recovery and Reinvestment Act of 2009 (ARRA) suggests that government spending, in particular funding for infrastructure projects, can stimulate the economy and increase employment in the short-term. A survey of the initial data suggests that the ARRA infrastructure projects generated approximately 6 positions per \$1 million of spending. However, the impact this has on Maryland can vary depending on what kinds of projects are funded, economic conditions when the bids are awarded, how quickly the funds are spent, and the number of jobs completed by out-of-state firms and individuals.

### Government Spending Multiplier

Economic theory examines the effect that government spending has on economic output. The government spending multiplier represents the estimated direct and indirect effects of a dollar's worth of spending on Gross Domestic Product (GDP). Direct spending impacts are equal to the money that the government pays to firms and individuals for a good or service, which translates to a one-for-one increase in national output. An indirect effect includes the additional consumption by a worker hired as a result of government spending. If a one dollar increase in government spending causes a total increase of \$1.50 in GDP, then the government multiplier is 1.5.

After estimating the impact of government spending on output, researchers will then typically estimate the impact the increased output has on employment, which is of particular interest given the large number of individuals who are currently unemployed. While some researchers find evidence that the spending multiplier is large and that government spending has a positive impact on the economy, others conclude that the multiplier is low or zero and that increases in government spending are directly offset by crowding out consumer spending and business activity.

### Factors that Influence the Effectiveness of Government Spending

A recent Federal Reserve analysis noted that much of the debate over the effectiveness of government spending in stimulating the economy has centered around, and revived interest in, the long-standing debate over the size of the fiscal multiplier. Despite considerable efforts by researchers, there is little consensus either theoretically or empirically on the size of this multiplier.

Research has identified several factors that influence the effectiveness of government spending on the economy, including the type and amount of spending, as well as the economic

conditions in which the spending occurs. In addition, the economic impact will depend on how and to what extent the spending is financed.

Output and factors of production are at least partially mobile across states. Economic activity generated in one state is typically, though not always, thought to cause positive spillover effects in neighboring areas. For example, not all of the workers on State construction projects will be Maryland residents nor will all winning bidders be in-state firms. In addition, many inputs used for the construction project, such as raw materials and equipment, will be purchased elsewhere. Consequently, a portion of the project's direct and indirect economic impacts will spill over to other areas; the impact on Maryland will be less than the total or national impact. Economists stress that this spillover effect is likely to be larger than average in Maryland, given the State's relatively small geography and economic integration with neighboring states.

In addition to the difference in local multipliers relative to the nation as a whole, research suggests there is variation among states and localities. Researchers identify the impact of government spending on the typical state or county, but significant variation has been found in the impact among localities. One recent analysis has concluded that government spending is much more effective in low growth areas of the nation.

The recent recession is the most severe economic downturn since the Great Depression; causing a large amount of underutilized resources, such as underemployment and unemployment as well as firms producing below their capacity. Underutilized capacity and low interest rates are considered to be the conditions in which the economic impact of government spending is at its maximum. For example, the Congressional Budget Office (CBO) estimates that, given the expected improvement in the economy and increase in interest rates, the effectiveness of government spending in stimulating output will be reduced by two-thirds by the end of 2015.

Another source of variation in the economic impact of government spending is whether the new spending is a temporary measure or a permanent increase. The employment impacts of a temporary increase in state construction spending will generally not persist beyond the time during which the projects are funded. CBO and the U.S. Council of Economic Advisors estimate that the impact on GDP and employment from the recent federal stimulus legislation reached its peak in 2010 and will continue to lessen over time, as spending and tax reductions fade.

## **American Recovery and Reinvestment Act of 2009**

In response to a sharp downturn in the U.S. economy and significant job losses, federal lawmakers enacted the American Recovery and Reinvestment Act of 2009 (ARRA). This legislation was designed to support the national economy and assist those impacted by the recession. ARRA was part of a comprehensive effort to stabilize the economy and financial system as well as address the bursting of the housing bubble. With an estimated cost of \$825 billion, it was one of the largest fiscal stimulus programs in American history. Increased federal spending comprised a little less than two-thirds of the program's total cost and reduced tax revenues comprised the remainder. Unlike the federal government, almost every state is

required to have a balanced budget in each year. Large budget deficits, caused in part by the recession, had forced state and local governments to cut spending, raise taxes, and lay off employees – actions which caused additional unemployment and further reduced national output. A significant portion of the ARRA provided fiscal relief to state and local governments in order to stop these actions.

Since the enactment of the ARRA, a number of studies and reports have attempted to measure its effects. The Council of Economic Advisors (CEA) advises that evaluating its impact is inherently difficult since it is not possible to observe what would have happened to the economy in the absence of the stimulus program. This difficulty was evident as the actual unemployment rate after passage of the ARRA was greater than what CEA initially forecasted it would be in the absence of the ARRA. Analyses conducted by CEA and CBO, as well as other organizations, have estimated that in the first quarter of 2011, the ARRA increased GDP by between 1.1 and 3.2% and increased the number of people employed by between 1.2 million and 3.6 million.

### **Effect of the ARRA on National Employment**

The ARRA required certain recipients of grants, contracts, and loans to report the number of jobs created or saved as a result of the funding. These totals are reported online at Recovery.gov and in periodic reports to Congress. The aggregate number of jobs, however, does not provide a comprehensive estimate of the impact of the ARRA because it excludes jobs created by lower-level subcontractors and jobs created through indirect impacts. Also, the jobs data only applies to about one-third of total funding of the ARRA. Although the recipient data cannot be used to directly determine the overall impact of the ARRA, it can provide an estimate on the magnitude and efficiency of its direct job creation. The total number of recovery funded jobs reported by recipients has decreased from its peak of 750,000 during the second quarter of 2010 to 400,800 in the third quarter of 2011.

### **Effect of the ARRA on Maryland Employment**

According to Recovery.gov, through the third quarter of 2011, a total of \$6.7 billion has been awarded to Maryland recipients, of which \$4.2 billion has been spent. Grants comprised a little more than one-half of the spending, one-fifth was loans, and the remaining amount was contracts. A significant portion of the grants includes money provided to State and local governments for fiscal relief and infrastructure projects.

A total of 6,787 jobs were reported by recipients as being supported by ARRA funding during the third quarter of 2011. Data on the amount of money awarded and paid to Maryland recipients, average number of jobs supported, and length of time imply that every \$1 million of ARRA funding provided in the State directly created between 2.8 and 4.5 jobs on an annual basis, an average of between \$220,200 and \$351,950 per job.



Detailed information was available for \$3.7 billion of the \$4.2 billion of ARRA money spent in Maryland. Of this amount, about \$600 million, or about 16%, was spent on infrastructure improvements, about three-quarters of which was highway-related. This funding supported an average of 1,511 jobs in each calendar quarter. This translates to an average cost for each job of \$158,150, or that every \$1 million in spending directly created 6.3 infrastructure-related jobs.

As noted previously, these estimates do not include indirect employment impacts or take into account the number of jobs that might be created in surrounding states. The higher employment impacts found for infrastructure projects relative to other spending is consistent with recent studies that have developed methods to use recent economic data to assess ARRA's impact. These studies have generally supported CBO and CEA estimates; the estimated multiplier for government spending has been found to range from about 1.5 to 2.0.

## **Conclusion**

Recent research on the impact of the ARRA suggests that government spending, in particular funding for infrastructure projects, can stimulate the economy and increase employment in the short term. However, a policy's impact may not be immediate; for example, the impact of the ARRA did not peak until about 18 months after its passage, and the impact of infrastructure projects are typically longer. A survey of the initial data suggests that ARRA infrastructure projects generated approximately 6 positions per \$1 million of spending. However, the impact this has on Maryland can vary depending on what kinds of projects are funded, economic conditions when the bids are awarded, how quickly the funds are spent, and the number of jobs spilling over to out-of-state firms and individuals.

# Economic Development

## Maryland Stadium Authority Feasibility Studies

The Maryland Stadium Authority has recently completed and is in the process of completing feasibility studies requested by local governments for projects that could support economic development in those jurisdictions. These studies represent opportunities for the State to partner with local government in the execution of infrastructure projects that have the potential for job creation and public-private partnership involvement.

### Feasibility Studies

The statute authorizes the Maryland Stadium Authority (MSA) to assist State agencies and local governments in managing construction projects. The budget committees must be notified, and funding must be provided entirely by the agency or local government requesting assistance unless funding is specifically provided in the budget for the project. The statute also authorizes the MSA to conduct feasibility studies. Feasibility studies are often the first step in the process of evaluating the financial components, including costs, financing options, economic impact, and market conditions, of potential infrastructure projects. In many instances the projects entail State and local government cooperation to finance and implement, and offer opportunities for private sector contribution through public-private partnerships. The budget committees must give approval for the studies, and costs must add to no more than \$500,000 annually of MSA's nonbudgeted funds.

### Recently Released Studies

- **Ocean City Convention Center:** In December 2007, the Town of Ocean City asked MSA to conduct a feasibility study for another expansion of its Convention Center. The feasibility study was released in December 2008. The study recommended a moderate expansion and remodeling to the convention center to modernize audio-visual and technical amenities, provide more function space to accommodate multiple events, and increase prime exhibit space. The study estimated the incremental economic impact to be between \$3.8 million and \$4.6 million annually in total spending at the State level, of which approximately \$3.2 million to \$3.9 million is estimated to occur in Ocean City.

In the fiscal 2011 capital budget bill, the General Assembly added \$4.3 million in general obligation funding to finance the State's share of the convention center expansion. State funds are matched with \$4.1 million from the Town of Ocean City. In May 2010, MSA presented the contract for pre-construction services for the expansion to the Board of Public Works. In August 2010, the Ocean City Council approved plans for the expansion, including its portion of the funding. A groundbreaking took place in August 2011.

- **Baltimore City Soccer Stadiums:** In December 2010, the Stadium Authority released a feasibility study on two potential soccer stadiums in Baltimore City. The \$100,000 study, funded by the City of Baltimore, considered the market for a Major League Soccer stadium in Westport for the DC United franchise. The study also evaluated prospects for a medium-sized facility in the Camden Carroll Industrial Park. The study determined a 25,000 seat major league soccer stadium in Westport could generate up to 940 new jobs and \$2.8 million in city tax revenue when the entire mixed use complex was complete. The study also recommended that the smaller stadium would likely be more successful in a suburban location where youth fields could be built around it rather than in a downtown industrial park.
- **Baltimore City Circuit Court Complex:** In May 2011, MSA released a feasibility study for the modernization and possible expansion of the Baltimore City circuit court complex. This study addresses programmatic and functional concerns in the historic Clarence Mitchell Courthouse and the nearby Post Office building which serves as an annex. The estimated project cost to renovate the two existing court facilities and construct the new criminal courthouse ranges from \$570 to \$602 million. The study concludes that the renovation and construction will provide more efficient facility operations with potential savings of more than \$6.1 million per year. Further, the development of rental office space in Courthouse East would likely attract law firms. This rental strategy has the potential to generate annual revenues of approximately \$1.67 million.

### Ongoing Studies

Several studies requested by local governments in various stages of completion should be made available in early 2012, including:

- **Wicomico County Youth and Civic Center:** In September 2010, the Stadium Authority received a request from Wicomico County to perform a study on its aging Youth and Civic Center in Salisbury. The market analysis will evaluate the existing facility, its uses, and economic and financial feasibility comparisons and options for renovating, expanding, and/or building a new facility.
- **Baltimore City Convention Center Expansion and Hotel:** MSA and Baltimore City are sharing the costs of a market and economic study of an expanded convention center, a new arena, and a new hotel in Baltimore. The study will include a discussion of incremental tax benefits for all three venues and a funding strategy.
- **Washington Redskins Training Facility:** MSA and Prince George's County are sharing the costs of a study to review the feasibility of a new Washington Redskins training facility if relocated to the county.

- **Troy Park Tennis Complex:** MSA and Howard County are sharing the costs of a market study of the Troy Park Tennis Complex to be located in Elkridge.
- **Maryland Horse Park:** Finally, the MSA is currently undertaking a study that will update findings from a previous study on the feasibility of a Maryland Horse Park and Agricultural Education Center. The study is at the request of the Maryland Department of Agriculture.

Although feasibility studies represent somewhat speculative projects still in the early planning stages, the State may wish to further evaluate whether any of the projects are candidates for more immediate financial support and offer opportunities for expedited infrastructure investment and job creation. Furthermore, State participation in these projects may also invite or spur private sector participation and financing which could further expedite their inclusion into the market.



# Business Regulation

## Horse Racing in Maryland: Industry Developments

**As Delaware, Pennsylvania, and West Virginia have contributed significant amounts from video lottery terminal revenues in recent years to horse racing purses and bred funds in those states, Maryland's racing industry has continued to decline. In addition, the dedication of video lottery terminal revenues in Maryland to purses and bred funds has yet to result in a significant boost to the industry's fortunes. While legislation was passed in 2011 in an attempt to provide financial assistance to the industry, numerous challenges to the long-term viability of the industry remain.**

### An Industry in Decline

Maryland's horse racing industry has endured decades of deteriorating revenues and attendance. Interest in the sport has waned, especially among younger fans, and the industry's share of the legal gambling dollar has declined due to increased competition from state lotteries, video lottery terminals (VLTs), and table games. Meanwhile, VLT gambling in Delaware, West Virginia, and Pennsylvania, with a dedicated portion of each state's VLT proceeds going to the horse racing industry, has resulted in significant increases in purse and bred fund amounts in those states. The increased revenue to purses and bred funds in those states has increased pressure on Maryland's horse racing industry to stay competitive. More recently, the dedication of revenues from VLT operations in Maryland has yet to result in a significant boost to the industry's fortunes.

At the beginning of 2011, the State's thoroughbred horse racing industry was in immediate danger of ceasing to function. After the owners of Laurel Park failed to secure a VLT operation license in 2009, Maryland Racing Inc., which encompasses Laurel Park, Pimlico Race Course, and other horse racing interests in the State, submitted a calendar 2011 racing schedule of 47 live thoroughbred racing days to the Maryland Racing Commission for approval. The proposal for 47 live racing days was significantly less than the 146 live racing days that were conducted in calendar 2010. Because such a large reduction in racing days would cause significant harm to breeders and racetrack workers, the commission rejected Maryland Racing Inc.'s proposal for 47 live racing days in calendar 2011 and also rejected a subsequent proposal to run 77 live racing days.

In order to prevent the potential closure of Laurel Park, as well as the Bowie Race Course Training Center, an agreement was eventually reached between the Administration, the racetrack owners, the Maryland Horse Breeders' Association, and the Maryland Thoroughbred Horsemen's Association to provide financial assistance that would allow for 146 live racing days in calendar 2011. As part of this agreement to subsidize racetrack operations for calendar 2011, the Maryland Economic Development Corporation (MEDCO) would provide \$3.6 million and the breeders/horsemen associations would contribute \$1.7 million for operating expenses. Under this agreement, VLT revenues allocated to the Racetrack Facility Renewal Account (RFRA) will

be used to repay MEDCO for the financial assistance provided for racetrack operations in calendar 2011.

Maryland's standardbred racing industry was in dire straits as well. Due to a dispute over simulcast revenue sharing between the owners of Rosecroft Raceway and the Maryland Jockey Club, both simulcasting and live racing had ceased at Rosecroft. Under the direction of Penn National Gaming, Inc., which assumed ownership of the track in March 2011, simulcasting of races resumed in August 2011, and live racing resumed in October 2011. At the same time, there was no live racing at Ocean Downs in 2010 due to construction of the VLT facility at that location; live racing resumed at Ocean Downs in the summer of 2011.

## **Racing Industry Assistance**

During the 2011 session, the Administration worked with the General Assembly and the various stakeholders to find a longer term solution to the challenges faced by the horse racing industry. Chapter 412 of 2011 (House Bill 1039) provides operating assistance to both thoroughbred and standardbred racing licensees in calendar 2012 and 2013. Specifically, Ocean Downs and Rosecroft Raceway may each receive up to \$1.2 million from VLT revenues allocated to the Purse Dedication Account to support a minimum of 40 live racing days in calendar 2012 only. Laurel Park and Pimlico Race Course may also receive up to \$6.0 million per year from the RFRA in both calendar 2012 and 2013 to support a minimum of 146 live racing days in each year. The amounts provided under current law to the Racecourse at Timonium for capital construction and improvements are increased through fiscal 2014, and Timonium may use up to \$350,000 in operating assistance per year to support a minimum of seven live racing days each year. In order to receive the specified operating assistance, each thoroughbred racing licensee must submit an application that includes a 12-month business plan and a five-year business plan that highlights the economic challenges facing the facilities along with strategies to address those challenges.

Chapter 412 conditions the operating assistance upon the recipients' good-faith efforts to resolve a longstanding dispute with respect to racing simulcasting agreements. As a condition of eligibility for funding, the respective parties are required to take affirmative steps to reach a simulcasting agreement that runs through at least December 31, 2013. To the extent an agreement was not reached by July 1, 2011, the parties may consent to mediation to ultimately reach an equitable simulcasting agreement. By October 1, 2011, if mediation proved unsuccessful, the parties must consent to binding arbitration.

Chapter 412 also established a Thoroughbred Racing Sustainability Task Force comprised of various industry stakeholders. By December 1, 2011, the task force must develop a plan for the long-term viability of thoroughbred racing in the State based on a minimum of 146 live racing days per calendar year. The Comptroller may not pay out the aforementioned operating assistance for the thoroughbred racetracks for the 2013 racing season until the Governor approves the task force's plan.

## **Recent Developments**

Despite the adoption of Chapter 412, recent developments have again threatened the promise of achieving a long-term resolution to differences within the horse racing industry. Although the respective parties entered mediation to attempt to reach a simulcasting revenue agreement, the mediation was unsuccessful, and the parties have consented to binding arbitration, which is in its early stages. Representatives of the Maryland Jockey Club recently indicated that the Jockey Club may choose not to pursue the thoroughbred operating assistance authorized for 2012 and 2013; as such, the Jockey Club has proposed reducing its 2012 racing schedule to 40 days and to ask the Maryland Thoroughbred Horsemen's Association to assume the risk and responsibility of operating Laurel Park.

Additionally, although informal talks have recently begun, as of November 2011 the members of the Thoroughbred Racing Sustainability Task Force have not yet been formally appointed. If the Jockey Club does not intend to accept the \$6 million in assistance in 2012 and 2013, there will be no reason to convene the task force. It is expected that each of these issues will be discussed at the November and December 2011 meetings of the commission.





# Business Regulation

## Offshore Wind

<b>Generating electricity from offshore wind continues to be a topic of discussion. A major concern is the cost to ratepayers despite the anticipated benefits to the environment.</b>
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### 2011 Legislation Began Discussion of Offshore Wind

Discussion of developing an offshore wind project for the generation of electricity to the State began during the 2011 session when the Administration introduced Senate Bill 861 and House Bill 1054. These bills would have required the Public Service Commission (PSC) to order the State's four investor-owned electric companies to enter into a long-term power purchase agreement (PPA) with one or more qualifying offshore wind generators. A "qualified offshore wind generator" was defined as a wind energy generation facility that is located in the Atlantic Ocean; at least 10 nautical miles from the Maryland shoreline; or within the federal waters adjoining another state within the PJM region. PSC would have been required to contract for between 400 and 600 megawatts of nameplate capacity for a period of at least 20 years and establish a nonbypassable surcharge or other mechanism to ensure costs or savings associated with a PPA were shared equitably.

Proponents say a 500-megawatt offshore wind project would:

- supply enough electricity to power 79% of all the homes on the Eastern Shore of Maryland or more than half the homes in Baltimore City;
- provide price stability;
- reduce emissions of carbon dioxide by 945,000 tons each year;
- generate enough clean energy to satisfy between 10% and 15% of Maryland's 2022 renewable energy goals; and
- have a significant economic impact, including creation of jobs.

### Offshore Wind Topics in Consideration of 2012 Legislation

Due to the complexity of the issues and concerns about the cost to ratepayers, the 2011 bills were held for study during the 2011 interim. Both the Senate Finance and House Economic Matters committees are examining (1) the current vision in generating electricity on the east coast and meeting the State's long-term electricity needs; (2) offshore wind project activities in other places; (3) the federal permitting process and other federal issues, such as the commerce clause; (4) available tax credits, federal subsidies, and loan guarantees; (5) benefits and concerns

to the environment; (6) proven technology and comparison to land-based wind projects; (7) purchasers in Maryland of electric supply from offshore and land-based wind projects; (8) long-term power purchase agreements and alternatives, such as ocean renewable energy credits; (9) construction costs and financing as compared to other types of electric plants; (10) development of transmission lines; (11) cost to ratepayers, including a nonbypassable charge; (12) economic development benefits, such as job creation and tax revenues; and (13) awarding of a contract to a qualified developer and role of PSC.

For the 2012 session, it is anticipated that the Administration will reintroduce legislation from last session with adjustments or propose another type of incentive to encourage the building of offshore wind turbines off Maryland's Atlantic Coast.

### Experiences in Other States and Countries

To date, three U.S. offshore wind generators have signed PPAs with utilities. **Exhibit 1** shows the prices and terms of these PPAs. Other states, such as Maine, New Jersey, New York, Ohio, Texas, South Carolina, and Virginia are all in various stages of considering the development of offshore wind projects. In other countries, such as in Denmark, the United Kingdom, Germany, and China, a total of over 3,350 megawatts of offshore wind capacity has been installed with another 3,216 megawatts under construction.

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**Exhibit 1**  
**Announced PPA Prices for Projects under Development**

<b><u>Project Name</u></b>	<b><u>Developer Name</u></b>	<b><u>Power Purchaser</u></b>	<b><u>Capacity Contracted (MW)</u></b>	<b><u>PPA Price (¢ per kWh)</u></b>	<b><u>PPA Base Year</u></b>	<b><u>Escalator (%)</u></b>	<b><u>Term (Years)</u></b>
Cape Wind	Cape Wind Associates	National Grid	264	18.70	2013	3.5	15
Delaware Offshore Wind	NRG Bluewater Wind	Delmarva Power & Light	200	9.99	2007	2.5	25
Block Island Wind Farm	Deepwater Wind	National Grid	29	23.75	2007	3.5	20

Source: U.S. Department of Energy, National Renewable Energy Laboratory

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Costs of an offshore wind generator cause energy produced by such a generator to be more expensive than conventional power sources. The U.S. Energy Information Administration (EIA) estimated, as of November 2010, the overnight (if installed in one day) installed capital costs for offshore wind at \$4,260 per kilowatt (kW); in comparison, EIA estimated the overnight capital cost of conventional natural gas combined cycle at \$970, coal (integrated gasification combined cycle with carbon capture and sequestration) at \$5,649, and nuclear at \$5,870.

Using the estimates from other states, the cost of a PPA includes a base generation rate of between \$9.99 to \$23.75 cents per kWh and an escalating operation and maintenance charge (possibly 2.5 to 3.5% per year). In comparing this cost with EIA's long-term forecast for overall average electricity rates, (currently \$11.47 cents per kWh) residential consumers will pay higher bills with electricity generated from offshore wind. The impact to the average household depends on how much offshore wind generation is included in their mix of energy sources.

Faced with a similar situation, constrained supply and little serious prospect of other new generation, New Jersey has chosen to implement an offshore wind renewable energy credit (OREC) system to market credits from its proposed offshore wind facilities. The New Jersey RPS system is similar to Maryland's. New Jersey has opted to carve out a specific requirement to meet RPS with ORECs, similar to Maryland's solar band. Developers of offshore wind facilities must bid in an RFP process for the legal right to sell ORECs that qualify in New Jersey. The implementing legislation requires the state to support 1,100 megawatts of generation from offshore wind, using a fixed price for the ORECs over the course of 20 years. A qualifying project must demonstrate positive economic and environmental net benefits.



# Business Regulation

## Electricity Markets

**Retail electric competition is continuing to develop in the residential sector, as electricity supplier rate offers have been below standard offer service rates for several years. Power outages from recent storms have caused the Public Service Commission to investigate the reliability of electric company distribution and communication systems.**

### Residential Retail Competition Legislation and Regulations

The Maryland Electric Customer Choice and Competition Act of 1999 restructured the electric utility industry in the State to allow electric retail customers to potentially shop for electric power from various electricity suppliers. Due to many factors, the robust competitive retail electricity market that some anticipated in 1999 started to develop only a few years ago. **Exhibits 1 and 2** show, as of September 2011, the percentage of customers who are served by competitive suppliers and the number of alternative plans offered in each service territory.

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#### Exhibit 1 Percentage of Customers Served by Competitive Suppliers

Residential*	19%
Small commercial	29%
Mid-commercial	56%
Large commercial/industrial	92%

\*By service territory: 22% of BGE's customers; 10% of Delmarva's customers; 20% of Pepco's customers; and 7% of Potomac Edison's customers.

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#### Exhibit 2 Alternative Plans Offered to Residential Customers by Service Territory

	<u>Competitive Electricity Suppliers</u>	<u>Alternative Plans</u>	<u>Alternative Plans Below SOS Rate</u>	<u>SOS Rate (per kWh)</u>
BGE	20	49	10	\$0.08886
Delmarva	7	20	12	\$0.0931
Pepco	13	38	23	\$0.0964
Potomac Edison	5	13	2	\$0.06639

Note: Most of the plans have a "green" energy component. SOS prices in the service territories of electric cooperatives have so far discouraged competitive supplier offers.

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During the 2011 session, several measures were aimed at further advancing the competitive market for electricity in the State.

**Customer Education and Customer Choice:** Chapters 202 and 203 of 2011 require the Public Service Commission (PSC) to take certain actions to increase awareness about competitive electric supply options. PSC must host and regularly update a customer choice education page on its website and must work with local media outlets to develop and air public service announcements publicizing customer choice. By July 1, 2011, PSC must convene a workgroup of interested parties to advise PSC on improvements to the PSC website information and on additional methods of consumer education that can effectively supplement the bills' requirements. Effective October 2011, PSC established a secure portal to allow electricity suppliers with active offers to upload the required information to PSC's website. Discussions may ensue during the 2012 session based on the workgroup recommendations.

**Customer Account Information:** Senate Bill 704 and House Bill 596 of 2011 would have required each distribution utility other than a cooperative, on request, to provide competitive suppliers with specified customer account information for its residential and small commercial customer (account name and number, the billing and service address, rate class, type of service, load profile, and energy consumption). Each distribution utility would have been required to provide notice to its customers and grant each customer the opportunity to "opt-out" of having their customer information shared with competitive suppliers. It is anticipated that similar legislation may resurface during the 2012 session.

## **Service Quality and Reliability of the Electric System**

During the summer of 2010 and the winter of 2011, several severe weather events resulted in extended electric service outages for Pepco customers. BGE customers also experienced extended winter storm outages. PSC initiated proceedings to investigate the reliability and quality of distribution services of Pepco, Pepco and BGE's January 26-21, 2011 storm preparedness, and general electric reliability and service quality standards. Moreover, legislation enacted during the 2011 session seeks to improve service quality and reliability and induce utilities to improve performance.

Chapters 167 and 168 of 2011 require PSC to adopt regulations by July 1, 2012, implementing service quality and reliability standards for the delivery of electricity to retail customers by electric companies. As a State goal, each electric company must provide high levels of service quality and reliability in a cost-effective manner and each electric company is held accountable if it fails to deliver reliable service. PSC is required to convene a stakeholder workgroup to provide recommendations regarding the regulations. The regulations must include standards relating to (1) service interruptions; (2) downed wire response; (3) customer communications; (4) vegetation management; (5) periodic equipment inspections; and (6) annual reliability reporting. Annually, beginning July 1, 2013, PSC must take corrective action, including imposition of civil penalties, against electric companies, that fail to meet the applicable standards. The civil penalty that may be imposed for a violation of a direction, ruling, order, or

rule of PSC increased from \$10,000 to \$25,000 per day and the penalty for a safety violation increased from \$500 to \$25,000 per day. Electric companies may not recover the cost of penalties from ratepayers.

In addition to the cases and administrative proceedings mentioned above, as with any major storm, PSC initiated another case to investigate electric service interruptions that occurred in August 2011 due to Hurricane Irene, occurring mostly in BGE's service territory. Based on PSC's determinations in all of the cases and the stakeholder recommendations regarding the regulations, discussions may ensue during the 2012 session.





# Business Regulation

## Workers' Compensation Insurance

The workers' compensation system in Maryland continues to be stable with only a minimal increase in workers' compensation insurance premiums for employers in 2012. Several legislative issues governing workers' compensation in the 2012 session may relate to assessments on workers' compensation settlements, procedures for canceling workers' compensation insurance for nonpayment of a premium, and the Workers' Compensation Commission's jurisdiction for requests pending an appeal of a case.

### State's Workers' Compensation System Is Stable; Future Uncertain

Maryland's workers' compensation insurance pure premium rate filed by the National Council on Compensation Insurance (NCCI) will increase by 1.4% in 2012. Pure premium rates, one component of overall premium rates, are set at a level necessary to prefund projected claim loss payments to injured workers. Other components of overall premium rates charged by an insurer include the insurer's expense and profit factors. Thus, an increase in the pure premium rate means employers in the State will pay slightly more in workers' compensation insurance premiums in 2012. Although pure premium rates have risen for three consecutive years, NCCI advises that the increases are minor adjustments and overall the State's workers' compensation system is stable. Further, the three annual increases follow four consecutive decreases in pure premium rates. **Exhibit 1** displays the 2012 pure premium rate adjustments for Maryland and northeastern and neighboring states. The wide range of rate changes indicates that there is volatility in the workers' compensation market regionally and nationally. The stability found in Maryland's system is uncommon.

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#### Exhibit 1 Pure Premium Rate Changes, Northeastern and Neighboring States Calendar 2012

Delaware <sup>1</sup>	18.5%	Rhode Island	0.6%
Virginia	10.5	<b>Maryland</b>	<b>1.4</b>
New York	9.1	Pennsylvania	.9
New Jersey <sup>1</sup>	6.9	Massachusetts	-2.4
New Hampshire <sup>1</sup>	6.7	Vermont	-2.6
District of Columbia	6.2	Maine <sup>1</sup>	-3.2
Connecticut <sup>1</sup>	4.5	West Virginia	-8.1

<sup>1</sup>Rate is pending and has not been formally established.

Source: National Council on Compensation Insurance (NCCI)

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Although the total amount of net written workers' compensation insurance premium nationwide has decreased every year since 2005, the lost-time claim frequency increased in 2010 – the first increase since 1997. This unsettling nationwide trend indicates that fewer policies were written nationwide in 2011 while the number of coverable events increased. Such trends do not exist in Maryland, but the State's indicators may begin to mirror national trends in future years. The future stability of the State's system depends on many factors including the status of the economy, which remains uncertain.

NCCI advises that the stability of Maryland's system, as compared with other states, is attributed, in part, to the fact that Maryland continually makes minor adjustments to its workers' compensation system and has not undergone a major reform in over 20 years. (On average, states reform their workers' compensation systems every eight years.) As a result, Maryland offers above average benefits to injured workers while ranking among the lowest states in costs to employers.

## **Legislative Issues Likely to Surface in 2012**

Workers' compensation-related issues in the 2012 session will likely be related to new proposals and topics that have been addressed in prior years. Legislation may be introduced to address the increasing size of assessments on settlements paid by employers or insurers. A proposal may also arise to make certain workers' compensation insurance cancellation procedures for nonpayment of a premium consistent for the Injured Workers' Insurance Fund (IWIF) and private workers' compensation insurers. Additionally, the jurisdiction of the Workers' Compensation Commission (WCC) over cases appealed to a higher court may again be an issue, and further discussion or action may be necessary to implement recent changes to death benefit provisions and prescription drug cost management efforts. The Joint Committee on Workers' Compensation Benefit and Insurance Oversight met in November 2011 to review these and other potential issues.

### **Assessment on Workers' Compensation Settlements**

WCC imposes assessments paid to the Subsequent Injury Fund (SIF) and the Uninsured Employers' Fund (UEF) on certain workers' compensation awards and settlements. The assessments are 6.5% for SIF and 2% for UEF. Unlike non-settlement awards determined by WCC, when a case is subject to a settlement WCC includes not only indemnity benefits but also future medical benefits in SIF and UEF assessment calculations. In recent years, settlement totals have increased significantly due to large future medical benefits (known as medical set-asides) required by the Centers for Medicare and Medicaid Services.

The increased medical set-asides have driven up SIF and UEF assessments paid by employers or insurers. Certain stakeholders advise that these medical benefits unfairly increase insurer or employer costs and should not be included in SIF and UEF assessment calculations in settlement cases.

## **Injured Workers' Insurance Fund – Cancellation of Insurance Policies**

Although IWIF is a quasi-governmental agency created by the State, the General Assembly has taken steps in recent years to regulate IWIF in a manner similar to that of a private insurance company. Nonetheless, State law specifies different standards for IWIF and private workers' compensation insurers regarding the cancellation of workers' compensation insurance policies. In particular, provisions governing private insurers and IWIF differ regarding the cancellation of a policy based on a failure to pay a premium. In such cases, current law allows an insurer to cancel with 10 days notice by "certificate of mail." (A certificate of mailing is a receipt that evidences the date a parcel was presented to the U.S. Postal Service.) Cancellation requirements for nonpayment of an IWIF premium are more onerous. IWIF is required to prove, prior to cancellation, that the policy holder received the notice of cancellation. This can only be accomplished by certified mail or personal service.

## **Jurisdiction of Workers' Compensation Commission Pending Appeal**

Section 9-742(a) of the Maryland Workers Compensation Act states that WCC retains jurisdiction only to consider three types of requests regarding a case that is pending appeal: (1) additional medical treatment; (2) temporary total disability benefits, provided the benefits were granted in the order on appeal and were terminated by the insurer or self-insurer pending adjudication or resolution of the appeal; and (3) as provided under Chapters 45 and 46 of 2011, a proposed settlement of a claim. However, a ruling by the Maryland Court of Special Appeals, *Sanchez v. Potomac Abatement, Inc., et al.*, 417 Md. 76 (2010), found that this is not an exhaustive list of issues over which WCC retains jurisdiction while a matter is on appeal. The ruling cited a different section of the Act (*see* Labor and Employment § 9-736 (b)) specifying that "the commission has continuing powers and jurisdiction over each claim."

Prior to the ruling, WCC only retained jurisdiction to consider the types of requests enumerated in statute. The ruling changes this standard and allows WCC to retain jurisdiction to address any issue that is not the subject of the appeal. Expanding the jurisdiction may create confusion during WCC hearings because it can be difficult to determine from appellate pleadings which part of an award is being appealed.

## **Death Benefits**

Chapters 435 and 436 of 2011 changed the calculation of benefits paid by employers or insurers to surviving spouses, children, and other dependents to replace income lost when a person dies due to a work-related accident or occupational disease. Although the law became effective October 1, 2011, regulations from WCC have not been adopted. As the changes are comprehensive and significantly alter the State's death benefit provisions, follow-up discussion, adjustment, or clarifying legislative action may be necessary.

## **Prescription Drug Cost Management**

Many physicians in Maryland repackage and dispense medications normally dispensed by retail pharmacies. Repackaging and dispensing of drugs by physicians increases medical costs for the workers' compensation system because physicians are not bound by state fee schedules and pharmacy cost controls, and inflate the average wholesale price of commonly dispensed drugs. Thus, the dispensing physician may profit from the repackaging of prescription drugs, but costs to the workers' compensation system increase as a result. According to NCCI, the cost per claim in cases where physicians dispensed prescription drugs increased in Maryland from about \$70 per claim in 2007 to over \$200 per claim in 2009.

WCC recently proposed regulations that would establish a uniform fee or pricing schedule for reimbursing prescription drugs required to treat injured workers, regardless of the identity of the individual dispensing the drugs. Several states have lowered overall workers' compensation costs by implementing similar measures. If the proposed regulations are not promulgated or fail to reduce prescription drug costs in the workers' compensation system, further discussion or legislative action may be necessary.

# Business Regulation

## Unemployment Insurance

**Even as the number of calendar 2011 unemployment claims have diminished slightly from the number of claims in the prior year, the Unemployment Insurance Trust Fund (UITF) has not replenished sufficiently to allow Maryland employers to pay from a lower tax table in calendar 2012. Accordingly employers will continue to pay from the highest tax rate table for a third year in a row. The Joint Committee on Unemployment Insurance Oversight is anticipated to consider a number of issues some of which may result in legislation.**

Unemployment insurance (UI) provides temporary, partial wage replacement benefits to persons who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Funding for the program is provided by employers through UI taxes paid to both the federal government for administrative expenses and to the states for deposit in their respective UI trust funds.

### The UI Trust Fund and Outlook for Employer Taxes in Calendar 2012

Legislation enacted in Maryland in 2005 altered Maryland's UI charging and taxation system by creating a series of experience tax rate tables that are based on the balance in the Maryland UI trust fund. An employer's unemployment experience determines the rate charged within each table. If the balance of the UI trust fund exceeds 5% of total taxable wages in the State (as measured on September 30 of the current year), the lowest tax rate table (Table A) is used to calculate employer rates for the following calendar year. In Table A, employers pay a minimum of 0.3% (on the first \$8,500 of annual wages of each employee) and a maximum of 7.5% (\$25.50 to \$637.50 per employee). The highest tax table (Table F) is used when the balance of the UI trust fund is not in excess of 3% of the total taxable wages. In Table F, employers pay a minimum of 2.2% and a maximum of 13.5% (\$187 to \$1,147.50 per employee).

The balance of the UI trust fund has fluctuated over the years, growing in good economic times to over \$1 billion in each of calendar 2007 and 2008, and diminishing in bad economic times to a level that required the UI trust fund to borrow \$133.8 million from the federal government in February 2010. Despite an infusion of \$126.8 million of federal modernization incentive funds in May 2010 and with the repayment of the borrowed funds by December 2010, the balance of the UI trust fund remains at a level that will require Maryland employers to continue to pay from the highest tax table for a third year in a row. Approximately half of the employers currently pay the lowest rate in Table F, while 7% pay the maximum rate in Table F.

The main driver of the continued decline of the UI trust fund is the increased claims for UI benefits resulting from the economic downturn. The State's unemployment rate rose from 3.6% at year-end 2007 to 7.6% at year-end 2009, from which it has declined slightly in 2010 and

2011. Average monthly payouts from the UI trust fund grew from \$36 million in calendar 2007 to a high of \$89 million in calendar 2009 (peaking at \$115 million in March 2009). Average monthly payouts decreased in calendar 2010 (\$75 million) and the first eight months of calendar 2011 (\$70 million). Initial claims grew from about 222,000 in calendar 2007 (18,500 monthly average) to a high of over 416,000 in calendar 2009 (35,000 monthly average); initial claims decreased slightly in calendar 2010 (377,000 – over 31,000 monthly average) and 2011 (230,000 for the first eight months – almost 29,000 monthly average). The taxable wage base decreased from \$17.7 billion in calendar 2009 to \$17.0 billion in calendar 2010 (anticipated to be \$17.4 billion for calendar 2011).

**Exhibit 1** shows the balance of the UI trust fund on September 30 of each year since 1999, the annual payout amounts since 1999, and Maryland's seasonally adjusted unemployment rate each year since 1999. The amount needed as of September 30, 2011, in order for employers to pay from Table E in calendar 2012 was \$524 million. Also shown in Exhibit 1 are the tax tables employers paid from during calendar 2006 to 2011 and will pay from during calendar 2012.

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**Exhibit 1**  
**Maryland's Unemployment Rate, UI Trust Fund Balance,**  
**and Annual Benefit Payouts**  
**Calendar 1999-2012**

<b>Tax Calendar Year</b>	<b>Percentage Unemployment Rate at End of Year<sup>1</sup></b>	<b>UI Trust Fund Balance as of Prior September 30 (\$ in Millions)<sup>2</sup></b>	<b>Tax Rate Table in Effect</b>	<b>Annual Benefit Payouts<sup>3</sup> (\$ in Millions)</b>
1999	3.5	\$741.6		\$265.0
2000	3.5	815.8		261.4
2001	4.5	882.8		394.5
2002	4.4	866.9		498.9
2003	4.3	824.7		512.1
2004	4.3	638.5		430.8
2005	3.8	703.6		384.7
2006	3.7	883.1	B	383.5
2007	3.6	1,032.5	A	433.3
2008	5.8	1,057.8	A	785.2
2009	7.6	895.4	B	1,068.8
2010	7.4	301.7	F	900.7
2011	7.3	273.4	F	617.3
2012	N/A	460.2	F	N/A

<sup>1</sup>Data is from DOL: unemployment rate for 2011 is as of August 2011.

<sup>2</sup>Data is from DLLR: calendar 2003 includes \$142.9 million of Reed Act funds provided by the federal government. Calendar 2010 includes \$133.8 million in borrowed funds (February 2010) and \$126.8 million in federal modernization funds (May 2010); borrowed funds were repaid in full by December 2010.

<sup>3</sup>Data is from DOL; 2011 payout amount is as of September 30, 2011.

Note: The historic high unemployment rate for Maryland was 8.3% in August 1982, and the historical low was 3.3% in March 2000.

Source: U.S. Department of Labor (DOL); Department of Labor, Licensing, and Regulation (DLLR)

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## **2011 Legislation Extends Federally Funded Benefits (Extended Benefits)**

The federal Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 made significant changes to the federally funded extended benefits (EB) program, allowing relatively lower unemployment rate states like Maryland to qualify. Under the federal Act, the federal government will reimburse states for 100% of EB costs for weeks of unemployment up to January 4, 2012, in most cases. The federal Act permits states an additional trigger that would allow eligible workers in states that do not already qualify to receive federally funded EB. Chapter 170 of 2011 establishes an additional “on” indicator based on a State average rate of total unemployment of at least 6.5%, to make UI claimants eligible to receive 100% federally funded EB.

Eligible claimants may receive up to 26 weeks of regular UI benefits from the State UTF. In addition to State UI benefits, in 2008, federal law established emergency unemployment compensation (EUC) for 47 weeks for UI claimants that have exhausted regular UI benefits for a total of 73 weeks of regular and EUC. Once EUC is exhausted, claimants may receive an additional 13 weeks of benefits through the EB program, for a total of 86 weeks UI benefits. EB applies to weeks of unemployment beginning after January 2, 2010, and ending four weeks prior to the last week for which 100% federal funding is available. EB may not be payable based on a State “on” trigger established under Chapter 170 for any week of unemployment beginning before October 1, 2011. Chapter 170 also establishes standards for a “high unemployment period,” under which additional weeks of EB payments may be paid to claimants under specified conditions. The State average rate of total unemployment must be at least 8.0% for eligible claimants to receive an additional seven weeks of EB.

Since federal funding cannot be used to reimburse expenses incurred by the State and local governments, Chapter 170 also establishes a special, nonlapsing Extended Benefits Fund to reimburse counties and municipalities with State funds for the expenses of EB. With a \$1.6 million appropriation of State special funds to be included in the fiscal 2013 budget, it is the intent of the General Assembly that counties will be reimbursed at least 60% of their expenses and municipal corporations will be reimbursed at least 80% of their expenses. The legislation terminates when the “on” trigger no longer applies or when 100% of federal funding for EB is no longer available.



## **Joint Committee on Unemployment Insurance Oversight**

The Joint Committee on Unemployment Insurance Oversight monitors laws and policies that affect the State unemployment system, including administrative and federal funding issues and studies other potential legislative changes to UI benefits. The joint committee anticipates holding a 2011 interim meeting in mid-November and reporting on its activities by December 1.

In addition to monitoring the benefit changes discussed above (modernization legislation and extended benefits legislation), the joint committee will discuss the status of the UI trust fund and unemployment system. Also, the joint committee anticipates discussing the following issues, some of which may result in legislation:

- options that may result in employers paying from a lower tax table;
- impact on the UI trust fund and the need to alter the tax tables if federal law requires states to increase their taxable wage base (currently at \$8,500 in Maryland);
- impact of private unemployment insurance on the UI trust fund;
- improper payments, such as (1) when a claimant continues to claim and receive benefits after returning to work; (2) the inability to validate that a claimant has met work search requirements; and (3) receiving information about a claimant's separation from work after a claim is paid that disqualifies the claimant from being eligible for benefits; and
- identity theft involving UI claims (filing a false claim using the Social Security number of a person who has not been laid off).

Further, Chapter 2 of 2010 directed the joint committee to study:

- recommendations on a cost-neutral plan to implement a graduated increase of the maximum weekly benefit to equal 54% of the average weekly wage (currently is 44%); and
- whether (1) the impact of lowering the earnings disregard serves as a disincentive for claimants to return to work (possibly part-time work which may turn into full-time work); and (2) the earnings disregard should be changed from a flat amount to a fraction of weekly wages or benefits.

# Business Regulation

## Surety Bail Bonds

**Surety bail bonds (surety insurance) must be obtained by a defendant arrested for a criminal offense to guarantee the defendant's appearance at trial. A major issue of the industry concerns the legality of the payment of the surety insurance premium to the bail bond company through the use of installment payments. The Maryland Insurance Administration is reviewing current regulations and may provide recommendations that could translate into 2012 legislation.**

### Background

A defendant has two options in the event he or she is granted bail. The defendant may either post the entire amount of the bail or use the services of a surety bail bondsman. A surety bail bond is a financial guarantee to the court that the defendant will appear in each and every court appearance as the court directs. There are two types of bail bondsmen: property and corporate surety. This paper focuses exclusively on corporate sureties.

A corporate surety bail bondsman, by far the more common of the two types, must be licensed by the Maryland Insurance Administration and have an appointment from an insurance company. Like other licensees, the Insurance Commissioner may deny a license or discipline a bondsman for a variety of reasons, including the willful violation of a State insurance law or any fraudulent or dishonest practice in the insurance business. Once licensed and appointed, a bondsman acts as an agent on behalf of the insurance company and pays a small premium to the insurance company for each surety bond. A bondsman charges the defendant 10% of the bail bond, an amount which must be filed with and approved by the Insurance Commissioner. For example, a defendant who has been granted bail for \$50,000 must pay a \$5,000 premium to the bondsman to post bail. The bondsman remits the \$5,000 to the insurance company less a commission. The commission is usually 1% or 2% of the bond's face amount. (\$500 to \$1,000 in this example.)

There are numerous parties involved in each bail bond transaction: the defendant, the bondsman, the insurance company, the State, and often a family or friend of the defendant who provides the premiums and co-signs the bond. Bail bonds are a unique type of insurance because there is very little risk involved for the insurance company, largely due to these relationships. While the insurance company is liable to the State as the surety on the bond, the bondsman is contractually liable to the insurance company. If a defendant does not show up for a hearing, the bondsman is responsible to pay the bail amount (*i.e.*, \$50,000) because the bondsman signed the bond. Liability of the bondsman to the State is limited to the full face value of the bond (*i.e.*, \$50,000). In turn, the bondsman will attempt to collect the money from a co-signor. Additionally, because a co-signor is often a friend or family member of the defendant, there is a strong deterrent against the defendant missing a court date.

Another unique aspect of the surety bail bonds industry is the apparent lack of competitive pricing. For example, a consumer who thinks he or she is being charged too much for auto insurance may look to another insurance company for a cheaper rate. This is not a possibility for defendants using the services of a bondsman. As noted above, the bondsman charges a 10% premium, an industry standard. However, because some defendants are unable to pay the entire 10% premium up front, a bondsman may finance the premium by allowing the defendant to make installment payments. This practice often amounts to a marketing tool for bondsmen. In an industry where the premiums are the same, a bondsman is able to draw business in by advertising down payments as low as 1%. This enables a defendant who has been granted bail for \$50,000 to pay as little as \$500 to post bail. According to the Maryland Insurance Administration, this practice forms the basis for the greatest issue facing the industry.

### **Legality of Installment Payments**

Accepting installment payments for a surety bail bond was the subject of *Insurance Commissioner for the State v. Engelman*, a 1997 Maryland Court of Appeals case. In *Engelman*, the court held that a bondsman is not prohibited from accepting promissory notes or other types of credit arrangements, with or without interest. The Insurance Commissioner had alleged that by failing to collect the entire amount of surety bond premiums at the time the bonds were written *Engelman*, a bondsman, had violated several provisions of the Insurance Article. The provisions in question prohibit insurance rebates and the collection of an insurance premium different than the rate filed with the Insurance Commissioner. The court reasoned that there was no violation as long as a bondsman attempts to collect the unpaid portion of the premiums. In other words, the statutes require that a bondsman collects the approved rate filing but not the method of collecting a premium.

While the court's decision solidified a bondsman's ability to set up installment payments, by basing its opinion on the assumption that the bondsman "used every effort to collect the balances due under the notes," it made clear a bondsman must make attempts to collect the entire amount to avoid violating the Insurance Article. Unfortunately, a bondsman does not always make legitimate attempts to collect this remaining portion. Industry competition has created a situation where bondsmen make under-the-table deals with defendants where it is agreed upon that the defendant only pay a portion of the 10% premium. The bondsman then fabricates a paper trail to indicate the establishment of an installment contract. The bondsman makes a lower percentage than he or she normally would, but the practice provides for a competitive edge which allows for greater volume to counteract the lower collected premium. This is a clear violation of the Insurance Article's anti-rebate statute and the requirement that an insurance company's premium equals the rate filed with the Insurance Commissioner. With the knowledge that this practice occurs and is a violation of law, the issue stops being one of statute interpretation and becomes one of enforcement.

## **Enforcement Mechanisms**

### **Other States**

Maryland is not the only state where bail bond financing has become an issue. Several other states attempted to address the issue in their 2011 legislative sessions. A string of domestic violence incidents involving defendants able to secure bail with as little as no money down paid to bail bondsmen led Connecticut legislators to reform the state's bail bond process. Connecticut law requires that a bondsman provide a monthly certification, under oath, that the premium charged for each bail bond matches the approved premium rate approved by the insurance commissioner and an annual certification listing the total amount of bail bonds executed and the total amount of premiums collected in the preceding year. Perhaps more importantly, the Connecticut law requires that a bondsman collect at least 35% of the premium when collecting a down payment and requires that the bondsman file a civil court action seeking appropriate relief if the remaining portion is not paid within 75 days of its due date. The requirement to seek a civil action provides a bright line for Connecticut's Insurance Administration in enforcing the collection of the total premium.

In 2011, Arkansas legislators considered two bills regarding bail bond financing. One explicitly allowed the acceptance of installment payments (HB 1246) while the other (HB 2169) explicitly forbade it. A joint committee will study the issue this interim. Finally, a failed Idaho bill introduced in 2011 would have required bondsmen to collect the entire 10% bail bond premium upon a defendant's release. However, the bill did not prohibit third parties from providing financing. According to the bill's fiscal note, the bill's intent was to "require bail agents to compete on the basis of service as opposed to which bail agent can get a defendant released for the least up front expenditure and improve the professionalism of bail agents by prohibiting the marketing message of „get out of jail free“."

### **Maryland**

Currently in Maryland, a bondsman must "maintain records of all bail bonds executed, in sufficient detail to enable the Insurance Commissioner to obtain all necessary information concerning each transaction." The bondsman must make these records available for inspection by the Insurance Commissioner for at least one year after the end of the surety liability. The difficulty lies in proving that a bondsman did not make legitimate attempts to collect any unpaid portion.

Senate Bill 286/House Bill 898 of 2011 would have specifically authorized bail bondsmen to accept installment payments. In the event of an installment agreement, the statute would have required a bondsman to keep and maintain records of all collection attempts, installment agreements, and affidavits of surety, as well as annually certify to the Insurance Commissioner the veracity of these records. The Insurance Commissioner requested that the Senate Finance and House Economic Matters committees not act on the bills; instead, while current record keeping requirements already provide an enforcement mechanism, the Insurance

Commissioner agreed to work with industry members to improve upon these regulations, including clearer guidance about installment payments, record keeping, and the steps that must be taken to ensure a bail bondsman does not inadvertently accept a rebate. The Insurance Commissioner anticipates reporting to the standing committees by December 1, 2011. Depending on the Insurance Commissioner's findings and recommendations, this may lead to further proposals for legislation.

# Public Safety

## Diminution Credits and Earned Compliance Credits

**Most inmates sentenced to the custody of the Division of Correction are entitled to earn diminution of confinement credits to reduce the length of incarceration. As the State looks for ways to reduce inmate populations in State correctional facilities, proposals to expand diminution credits and to create earned compliance credits for individuals under the supervision of the Division of Parole and Probation may be considered.**

### Diminution Credits

A criminal sentence imposed by a trial court is often not served in its entirety before expiration of the sentence due to diminution of confinement credits that shorten the time required to be served. Diminution credits are days of credit either granted to, or earned by, State and local inmates on a monthly basis. Currently, the average sentence for all inmates serving a term in a Division of Correction (DOC) facility is 45.3 months, with an average actual stay in confinement of about 30.3 months. This represents an average percentage of time served of 67%. This is due to early releases that occur as a result of the accrual of diminution of confinement credits, death, parole (including medical parole), and court-ordered releases (including sentence review and new trials). The Department of Public Safety and Correctional Services (DPSCS) estimates that an inmate serving a sentence for a crime of violence or drug distribution will serve, on average, approximately 75% of the inmate's sentence before being released on mandatory supervision release (MSR), assuming the inmate is not granted parole.

Diminution credits are a means of recognizing an inmate's good behavior and participation in programs by awarding various categories of time credits that will reduce the term of confinement. Inmates generally receive reductions of up to a certain number of days per month beginning the first day of commitment that count toward expiration of their sentences. These credits may be for (1) good conduct; (2) performance of industrial, agricultural, or administrative tasks; (3) participation in vocational, educational, or other training courses; and (4) involvement in special projects.

Inmates serving sentences for crimes of violence or drug distribution are awarded good conduct credits at the rate of 5 days per month and may earn up to 10 days of other credits, for a maximum of 15 days per month. Other inmates are awarded good conduct credits at the rate of 10 days per month and may earn up to 10 days of other credits, for a maximum of 20 days per month. An inmate who receives 10 good conduct credits per month will serve, on average, 55% to 60% of his or her sentence before being released on MSR, assuming no parole. Credits may be forfeited or restricted through misbehavior in the institution. Comparable to inmates committed to DOC, an inmate in a local correctional facility (including the Baltimore City Detention Center) may receive a deduction of 5 days per calendar month for the inmate's term of

confinement for good conduct, industrial or administrative tasks, educational and training courses, work projects, and special programs, not to exceed a total of 15 days per month.

An inmate may not earn any diminution credits if the inmate is (1) serving a sentence for first or second degree rape or sexual offense against a victim under age 16; or (2) serving a repeat sentence for third degree sexual offense against a victim under age 16. Furthermore, imprisonment for a lifetime sexual offender supervision violation is not subject to diminution credits.

Between 15,000 and 16,000 persons are admitted to and released from DOC facilities annually. During fiscal 2010, 3,711 persons were released as a result of expiration of sentence, while 4,495 persons were released on mandatory supervision release resulting from diminution credits. There is no discretion involved in release on mandatory supervision.

An individual remains on MSR until the maximum expiration date of the term of confinement. As is the case with parolees, if the individual violates a condition of MSR, the Maryland Parole Commission may revoke the release and require the individual to serve the balance of the sentence. After an inmate's mandatory supervision has been revoked, the inmate may not be awarded any new diminution credits on the term of confinement for which the inmate was on MSR.

If an inmate is sentenced to imprisonment for a crime of violence committed between June 1, 2002, and October 1, 2003, or any crime after October 1, 2003, while on mandatory supervision, and the mandatory supervision is then revoked, the inmate will automatically lose all diminution credits awarded before the inmate's release on mandatory supervision, and the inmate is not eligible for any new diminution credits on that term of confinement. An inmate convicted of a crime of violence committed on or after October 1, 2009, may not be released by expiration of sentence or placed on mandatory supervision with the application of credits before the inmate is eligible for parole.

DPSCS was requested in the 2011 *Joint Chairmen's Report* to submit a plan to reduce the State's prison population. The plan submitted by DPSCS included the option of increasing diminution credit earnings. For further information on the options developed by DPSCS, please see the issue paper "State Correctional System" under this heading.

## **Earned Compliance Credits**

In 2011, legislation (House Bill 1245) was introduced that would have allowed the award of "earned compliance credits" to an individual under supervision by the Division of Parole and Probation (DPP) that could have, under certain circumstances, had the effect of shortening or otherwise adjusting the term of supervision.

## DNA Testing of Arrestees

<b>The current system of collecting DNA samples from individuals charged with a felony, fourth degree burglary, or breaking and entering a vehicle is scheduled to sunset in 2013.</b>
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### DNA Collection Requirements

According to the National Conference of State Legislatures, all states require certain convicted sex offenders to provide a DNA sample and 47 states require all convicted felons to do so. Laws authorizing collection of DNA samples from arrestees have been enacted in 21 states. Constitutional challenges to these laws under the Fourth Amendment (prohibiting unreasonable searches and seizures), Eighth Amendment (prohibiting cruel and unusual punishment), and the Ex Post Facto Clause (prohibiting criminalization or punishment of behavior that was not criminal or punishable at the time of its commission) have been largely unsuccessful.

In Maryland, DNA samples are collected from individuals convicted of a felony, fourth degree burglary, or breaking and entering a vehicle. A DNA sample must also be collected from an individual who is charged with a crime of violence or felony burglary or an attempt to commit those crimes. State law defines a “crime of violence” to include several specific crimes, including abduction, arson, kidnapping, manslaughter, murder, rape, carjacking, first or second degree sexual offense, and various types of assault. DNA samples are collected by a trained designee at (1) a facility specified by the Secretary of State Police for samples collected at the time the individual is charged; (2) the correctional facility where the individual is confined; (3) a facility designated by the director of the Crime Laboratory for an individual on probation or not sentenced to imprisonment; or (4) a suitable location in a circuit court at the time of sentencing.

Chapter 465 of 2002 expanded the applicability of the DNA sample submission requirement from an individual convicted of a specified “qualifying crime of violence” to an individual convicted of a felony or the misdemeanors of fourth degree burglary or breaking and entering a motor vehicle. Chapter 240 of 2003 eliminated the sunset date of Chapter 465, which would have terminated September 30, 2003. Chapter 337 of 2008 required the collection of DNA samples from individuals charged with a crime of violence or felony burglary; made various changes relating to postconviction review and the collection, processing, destruction, and use of DNA samples and records; and imposed certain reporting requirements on the Department of State Police, local law enforcement agencies, and the Office of Legislative Audits relating to DNA collection and testing. Chapter 337 will terminate December 31, 2013, if the provisions are not continued.



## Storage, Use, and Destruction of Samples

The State Police Crime Laboratory is required to store and maintain each DNA identification record in the statewide DNA database. Matches between evidence samples and database entries may only be used as probable cause and are not admissible at trial unless confirmed by additional testing.

A sample collected from an individual charged with a crime of violence or felony burglary may not be tested or placed in the database system before the first scheduled arraignment date, unless the individual consents to or requests testing prior to the arraignment for the sole purpose of having it checked against a sample that has been processed from the crime scene or the hospital. If all qualifying criminal charges are determined to be unsupported by probable cause, the DNA sample must be immediately destroyed, and notice that the sample was destroyed must be sent to the defendant and the defendant's counsel of record. Any DNA samples and records generated as part of a criminal investigation or prosecution must be destroyed or expunged automatically from the State DNA database within 60 days if a criminal action begun against the individual relating to the crime does not result in a conviction, is finally reversed or vacated and no new trial is permitted, or results in the granting of an unconditional pardon. A DNA sample or record may not be automatically destroyed or expunged if the criminal action is placed on the *stet* docket or the individual receives probation before judgment.

To guard against the improper use of DNA information, disclosure of DNA information to unauthorized persons, obtaining DNA information without authorization, and testing of a DNA sample for information that does not relate to the identification of an individual are misdemeanor offenses punishable by maximum penalties of five years incarceration, a \$5,000 fine, or both. In addition, willfully failing to destroy a DNA sample for which notification has been sent stating that the DNA sample has been destroyed or for which destruction has been ordered is a misdemeanor offense punishable by imprisonment not exceeding one year or a fine not exceeding \$1,000. Searching the statewide DNA database for the purpose of identifying an offender in connection with a crime for which the offender may be a biological relative of the individual from whom the DNA sample was acquired is also prohibited.

## Potential Legislation

The Department of State Police has expressed support for legislation to extend or repeal the 2013 termination of Chapter 337 of 2008. Other potential legislation includes measures to expand DNA testing to all inmates, regardless of the offense for which they were convicted, or to expand DNA testing to individuals charged with offenses other than an actual or attempted crime of violence or felony burglary. Expanding the categories of individuals subject to DNA testing could put a strain on Department of State Police resources. Additional expenditures could result from the need to hire additional forensic personnel, laboratory collection specialists, IT staff, quality assurance specialists, and research statisticians, and from costs associated with equipment and database maintenance.

# Public Safety

## Sex Offenders

**Maryland has seen many changes in its sex offender laws in recent years, including legislative changes intended to bring the State into compliance with the 2006 federal Sex Offender Registration and Notification Act (SORNA). On July 28, 2011, the U.S. Department of Justice issued a statement that Maryland was found to be compliant with SORNA.**

### Background

Although Maryland had enacted many laws specifically targeting sex offenders over the years (including the original “Megan’s Law” in 1995 and legislation that significantly increased oversight and penalties in the 2006 special session), additional enactments were necessary to bring Maryland into compliance with the federal Sex Offender Registration and Notification Act (SORNA), enacted as Title I of the Adam Walsh Act in 2006.

SORNA requires conformity by the states with various aspects of sex offender registration provisions, including registration of specified juvenile offenders, collection of specific information from registrants, verification, duration of registration, access to and sharing of information, and penalties for failure to register. Failure to comply with SORNA puts a state at risk to lose 10% of Byrne Justice Assistance grants, which all states use to pay for such things as drug task forces, anti-gang units, police overtime, and other law enforcement activities. State compliance with SORNA is overseen by the federal Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office). Although a blanket temporary waiver was in place for all of the states – moving the deadline for compliance to July 2011 – Maryland still stood to lose about \$540,000 in fiscal 2013 if the deadline had not been met.

In 2010, Maryland’s sex offender registration laws were substantially revised in an effort to comply with SORNA and to increase penalties for certain sex offenses committed against minors. Among these provisions, sexual offenders are now sorted into three separate tiers, replacing the four former categories of sexual offenders. A Tier I sex offender must register every six months for 15 years, a Tier II sex offender must register every six months for 25 years, and a Tier III sex offender must register every three months for life. Chapters 174 and 175 of 2010 also applied sex offender registration requirements retroactively; required registration for homeless offenders; generally narrowed all registration, change of information, and notification deadlines to three days; established a listing of juvenile sex offenders accessible only by law enforcement personnel for law enforcement purposes; and increased the maximum and mandatory minimum penalties for a person convicted of rape in the second degree of a child under the age of 13 years, or sexual offense in the second degree against a child under the age of 13 years, to life imprisonment and 15 years, respectively.

In separate enactments that year, Chapters 176 and 177 of 2010 strengthened existing provisions and addressed unintentional operational difficulties attendant to the lifetime supervision of sex offenders. Other enactments from the 2010 session reconstituted and expanded the Sexual Offender Advisory Board; set restrictions on the pretrial release of sex offenders and required sex offender information to be included on a “RAP” sheet; created a new crime that prohibits a person charged with committing a sexual crime against a minor from violating a condition of pretrial or posttrial release and prohibits the person from contacting the victim; prohibited the earning of diminution credits by State or local correctional facility inmates convicted of certain sexual offenses; authorized any individual to notify the local department of social services or law enforcement if a child lives with, or is in the regular presence of, a certain registered sexual offender; and expanded the prohibition on human trafficking to include forced participation in a “sexually explicit performance.”

However, despite these enactments, Maryland was not successful in securing compliance under the federal Act in 2010.

## **2011 Enactments**

In response to the State’s failure to meet compliance standards, additional legislation was introduced in the 2011 session.

Chapters 192 and 193 of 2011 increased the statute of limitations from one year to three years for the initiation of a prosecution for a fourth degree sex offense involving nonconsensual sexual contact, if the victim was a minor at the time of the offense. A fourth degree sexual offense is punishable by imprisonment not exceeding one year or a fine not exceeding \$1,000 or both.

Chapter 374 of 2011 clarified that a person convicted of sexual solicitation of a minor, under circumstances in which the solicitation was directed at a law enforcement officer posing as a minor, must register with the State’s sex offender registry. Chapter 374 applied this change retroactively to a person convicted on or after October 1, 2010, and also applied sex offender registration requirements retroactively to a person who is convicted of a felony, rather than any crime, on or after October 1, 2010, and who has a prior conviction for an offense for which sex offender registration is required.

The Act also increased, from 13 to 14 years of age, the age for inclusion on the registry of juvenile sex offenders, and limits the delinquent acts for which juvenile registration is required to acts, which, if committed by an adult, would constitute specified second and third degree sexual offenses. Also under Chapter 374, a juvenile registrant must appear in person at a location designated by the Department of Juvenile Services (DJS) every three months to (1) update and verify the information included in the registry; and (2) allow DJS to take a digital image of the juvenile registrant.

## **Federal Compliance**

On July 28, 2011, the U.S. Department of Justice issued a statement that Maryland was found to be compliant with SORNA and the Walsh Act. Maryland is 1 of 33 jurisdictions (15 states, 16 tribes, and 2 territories) determined to be in substantial compliance under the stringent federal requirements. Although several changes to SORNA have recently been proposed, Maryland's status as being in compliance will not be jeopardized if any are adopted.



# Public Safety

## State Correctional System

**The Department of Public Safety and Correctional Services has proposed options to reduce the State's inmate population to the point of being able to close a correctional facility and achieve fiscal savings. Meanwhile, construction of a Baltimore City youth detention facility by DPSCS remains stalled pending resolution of a policy issue regarding adequate bed space for the facility.**

### Background

The primary focus of the Department of Public Safety and Correctional Services (DPSCS) is the supervision and management of Maryland's criminal population. Three agencies within DPSCS focus on those criminals sentenced to terms of confinement by the courts: the Division of Correction (DOC), the Patuxent Institution, and the Division of Pretrial Detention and Services (DPDS). DPDS also manages those awaiting trial in Baltimore City. The Division of Parole and Probation (DPP) focuses on criminals sentenced to probation by the courts or released from correctional facilities.

### Detention – Baltimore City Youth Detention Center

The State of Maryland is responsible for operating the pretrial and detention functions for the City of Baltimore. Youth who are detained in the adult criminal justice system in Baltimore, either by automatic or judicial waiver, are currently held in the Juvenile Unit at the Baltimore City Detention Center. According to a 2000 investigation by the U.S. Department of Justice, the conditions in the current detention center facility do not provide adequate program or education space for youth charged as adults and do not comply with sight and sound separation requirements. The State has authorized approximately \$32.7 million and pre-authorized an additional \$62.7 million toward the design and construction of a new Youth Detention Center. In its original design, the new facility provides bed space for 180 youth who have been charged as adults and will also address the functional requirements for this special population by providing adequate support services space and ensuring sight and sound separation from the adult offender population. The new facility will also provide a separate booking and intake center for the youth population, which will ease processing of offenders at the current intake facility.

Although construction bids for the project were received in July 2010, DPSCS has delayed awarding a construction contract pending resolution of a policy issue regarding adequate bed space for the facility. The State has been challenged on the validity of its population projections, with the opposition indicating that 180 beds is too high an estimate. The original population projections, submitted to the Department of Budget and Management in

November 2007, were based on a juvenile charged as adult population of 120 youth, with a peak population near 150 youth. The average population of youth charged as adults over the last six months has been 55.

During the 2011 legislative session, the General Assembly restricted the previously authorized construction funding until a report is provided presenting a new population analysis and a proposed resolution to the capacity issue. DPSCS commissioned the National Council on Crime and Delinquency (NCCD) to conduct the new population analysis. The findings were released in May 2011, forecasting the need for 117 beds over the next 30 years, as opposed to 180 beds.

Public debate has surrounded the project since the 2011 session, and some concern exists with both population projections. For instance, the 2007 population projections utilize a much higher peaking and classification factor than does the NCCD study. This contributes to the significant difference in the projected capacity requirements between the two studies. NCCD criticizes the 2007 population projections for focusing on years where the data trends are increasing, which leads to an inflated capacity; however, the revised NCCD projections largely focus on the two most recent years of data, where trends are primarily in decline and result in a much smaller figure. Neither projection provides an analysis that encompasses all years of data. In addition, the NCCD report proposes a number of alternatives for addressing the youth charged as adult population, in order to reduce the bed space needed in an adult correctional facility. This calls into question the independent viewpoint of the analysis. Further complicating the situation is an alternative proposal supported by a number of juvenile advocacy groups that would repurpose the authorized funding to be used for school construction and community programs instead of building a new detention center.

The department has yet to submit the required report, including a proposed resolution to the capacity issue, which, upon approval from the legislature, would allow the project to proceed. The report must be provided to the General Assembly 45 days prior to expenditure of any authorized construction funding.

## **Incarceration – Options for Reducing the State Inmate Population**

Maryland has been facing an ongoing structural deficit in excess of \$1 billion for a number of years, which has resulted in significant reductions in State spending. In response to a 2011 *Joint Chairmen's Report* request, DPSCS developed three potential options for reducing the size of the State's inmate population to the point of being able to close a correctional facility and achieve additional fiscal savings. Two of the three options would require legislative action prior to implementation.

### **Option 1 – Population Cap**

This option would put in place a population cap of 21,500 inmates, the capacity at which the department believes it can safely and securely manage its facilities, while still closing other institutions. Under this option, if the population were to exceed 21,500 inmates, the Secretary would have the authority to release inmates using a variety of defined criteria. The criteria considered include proximity to release date, the type of crime committed by the offender, behavior while incarcerated, program participation and compliance while incarcerated, and whether the inmate is a sex offender registrant. Based on the identified criteria, DPSCS estimates that approximately 1,294 inmates would be eligible for release. This would result in approximately \$14.7 million in savings, including the closure of three pre-release facilities. This option would require action by the legislature prior to implementation.

### **Option 2 – Advanced Inmate Release**

The second option, advancing the release of nonviolent offenders who are within six months of their release date, utilizes the same criteria as Option 1 to identify the population eligible for release. Unlike Option 1, however, this option would place authority for granting release with the Maryland Parole Commission, as opposed to the Secretary of Public Safety and Correctional Services. Of the approximately 10,000 nonviolent offenders in the State correctional system, DPSCS estimates that 1,165 inmates are within six months of release and would be eligible for advanced release (*i.e.*, are eligible for parole under current law). This would result in savings of approximately \$13.6 million, including the closure of three pre-release facilities. In order to sustain the reduction after this initial release, inmates who meet the criteria and are within six months of release would need to continue to be released on a monthly basis. This option can be implemented administratively by the department via actions taken by the Maryland Parole Commission, and would not require legislative approval.

### **Option 3 – Increase Diminution Credits**

The third option presented by the department proposes to increase diminution credits. This increase can be achieved by increasing the total number of diminution credits that may be earned from 20 to 25 per month for those inmates who are currently eligible to earn 10 good conduct credits per month (basically, inmates who are not serving a sentence for a crime of violence or a drug felony). This option requires legislative approval, and once granted, would take the longest of the three options to implement. New credits can only be applied to offenders entering the system, not inmates currently in the system. Even with the 15- to 24-month implementation period, this option proposes to release the most inmates, approximately 1,800. In addition, it would result in the most savings, approximately \$29.4 million, including the closure of four pre-release facilities. For more information on diminution credits, please see the issue paper “Diminution Credits and Earned Compliance Credits” under this heading.

The department notes that offenders released under any of the three options would receive re-entry services and would continue to be supervised by the Division of Parole and



Probation until reaching the sentencing expiration date. In addition to the three DPSCS proposals, there are a variety of other options the legislature could consider that would remove offenders from prison facilities, while still providing support services to help rehabilitate and transition inmates to the community. These include increased use of problem-solving courts, contractual half-way houses or group homes, and day reporting centers. DPSCS has also suggested that having local correctional facilities and Department of Labor, Licensing, and Regulation One-Stop Career Centers play a larger role in connecting offenders to community and re-entry services prior to release could also be substantially beneficial.

### **Community Supervision – Earned Compliance Credits**

Between fiscal 2006 and 2010, the number of cases under Division of Parole and Probation supervision increased by 8.5%. Nearly 55,000 individuals were supervised in fiscal 2010, costing the State \$101.9 million. Contracting the size of the supervised offender population would result in fiscal savings for the State and a reduction in agent-to-caseload ratios, and would allow for resources to be diverted to the most at-risk and violent offenders. One method for achieving a reduction in the supervised offender population is to institute an early release program for parolees, probationers, and mandatory releases. Having the ability to shorten periods of supervision through good behavior and participation in education, employment, or other services would serve as an incentive, as well as lower costs and reduce opportunities for a person to return to prison on a technical violation.

Some states, in an effort to reduce crime and generate savings, have already established earned compliance credits for offenders under community supervision. In 2007, Nevada passed legislation to allow an individual's term of supervision to be reduced by up to 20 days per month by earning good time credit while on parole. Legislation enacted in Arizona in 2008 awards up to 20 days per month of earned compliance credit for a probationer who is making progress toward the goals established in the probationer's case plan and is current on court and restitution payments. Between 2008 and 2010, statewide revocations in Arizona declined by 29% and new felony convictions were reduced by 31%. Another alternative, similar to one implemented in Delaware, would be to impose a term of supervision cap, meaning that certain offenders would automatically be released from their terms of supervision after maintaining compliance with the conditions of supervision for an identified period of time. Having the term of supervision cap in statute would eliminate the backlog generated from having to request an early termination from either the courts or the Maryland Parole Commission.

House Bill 1248 (failed), introduced during the 2011 regular legislative session, proposed implementation of an earned compliance credit program for offenders under DPP supervision in Maryland.

# Criminal Law

## Caylee's Law

**The acquittal in Florida of Casey Anthony on murder, manslaughter, and child abuse charges has raised questions regarding the legal responsibility of a parent to report a child lost or dead. The failure of a parent or guardian to notify law enforcement of a missing child is not currently a crime in Maryland.**

### Background

In 2008 Casey Anthony was charged in Florida with the murder of her two-year-old daughter, Caylee, after she waited a month to tell police that the girl was missing and lied to investigators about Caylee's whereabouts. By the time Caylee's remains were found, her body was so decomposed that a cause of death could not be determined. During the closely watched trial, which lasted six weeks from May to July 2011, the prosecution argued that Casey murdered her daughter because she wanted her freedom and presented evidence suggesting that Casey had been unbothered by the disappearance of the girl. The lack of physical evidence, however, hindered the prosecution's case. On July 5, the jury found Casey Anthony not guilty of murder, aggravated child abuse, and aggravated manslaughter of a child, but guilty of four misdemeanor counts of providing false information to a law enforcement officer.

The acquittal of Casey Anthony on the murder, manslaughter, and child abuse charges led to a public outcry over the perceived miscarriage of justice in the case. Fueled by the extensive media coverage of the high-profile trial, and legal commentators who suggested that the verdict was incorrect, an online petition calling for federal and state laws to respond to the outcome of the trial gained momentum within hours after the verdict was read. Dubbed "Caylee's Law," the legislation proposed in the petition makes it a felony for a parent to fail to report the death of a child within an hour, or fail to report that a child has gone missing within a day.

### Proposed Legislation

According to the National Conference of State Legislatures (NCSL), as of October 5, 2011, legislators in 12 states had filed versions of Caylee's Law (Alabama, California, Florida, Illinois, Kentucky, Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, and Tennessee). The major areas of variation in the bills are the qualifying age of the child who has died or gone missing, the types of individuals to which the reporting requirements apply, and the period of time during which an incident must be reported. Most of the initiatives create new felonies. Many of the bills apply only to children under the age of 12 or 13, others to children under the age of 16, and still others apply to all minors. A majority of the bills criminalize the failure to report a death or disappearance only by persons who have

some sort of custodial relationship with a child. Some apply to parents and legal guardians only, and others apply to all caretakers or caregivers, or to individuals who have physical or legal custody of a child. Bills in New Jersey and New York create lesser offenses for any individuals with knowledge of a child's death or disappearance who fail to notify certain officials within certain timeframes. Many of the proposals require the reporting of a death within an hour and a disappearance within a day, as the original "Caylee's Law" described in the online petition provides. With regard to the death of a child, some of the bills require that it be reported immediately, while others allow up to 24 or 48 hours. With regard to the disappearance of a child, the bills generally require reporting within 24 or 48 hours of the child going missing.

Some proposals also include increased penalties for false statements made to law enforcement. A Florida bill includes a provision that makes it a felony for a caretaker to give false information to a law enforcement officer conducting an investigation involving a minor with the intent to mislead the officer or impede the investigation. Additionally, an Ohio initiative increases the penalty for "falsification to mislead a public official" as part of its "Caylee's Law" legislation.

NCSL also reports that legislators in Colorado, Georgia, Kansas, Maryland, Missouri, North Carolina, Oklahoma, Oregon, Rhode Island, Virginia, West Virginia, and Wisconsin have promised to introduce "Caylee's Law" initiatives in their states.

## **Current Laws**

Currently there are no laws in any state that impose criminal penalties for the failure to report a missing child. However, some states criminalize the filing of a false missing child report and the failure to report abuse or neglect of a child. Statutes in Arizona, Indiana, Massachusetts, and North Carolina make it a crime to fail to report the death of a person (not necessarily a child). These laws vary with regard to who is required to report the death and whether the death is required to be reported only under certain circumstances, such as the death of a seemingly healthy person or a death by violence.

## **Criticism of Caylee's Law**

Critics contend that the various versions of "Caylee's Law" represent an emotional reaction to an anomalous case, rather than sound policy. Opponents point out that such laws could be difficult to enforce because they require reporting within a period of time that can rarely be identified with certainty. Specifically, pinpointing the time of a child's death or the time at which a child goes missing, or the time at which a parent or other caretaker becomes aware of a death or disappearance can be extremely difficult in some cases. Critics also note that the laws could have unintended consequences by making criminals of parents and other individuals who fail to report a death or disappearance in a timely manner for purely innocuous reasons and by imposing unnecessary legal burdens on grieving or distraught parents. Finally, concern has been

expressed that the various “Caylee’s Laws” merely seek to provide an alternate avenue to conviction when a prosecutor believes but cannot prove that a child has been murdered.



# Criminal Law

## Death Penalty

**The death penalty remains in flux: proposed regulations to administer the death penalty have been withdrawn and no new regulations have been proposed; the drug, sodium thiopental, used in executions is no longer available for purchase in the United States; and the Court of Appeals has recently questioned the standard used by jurors to consider the impact of aggravating and mitigating circumstances during the sentencing phase of a capital case.**

### Effect of 2009 Legislation

The application of the death penalty in the State has been limited since the enactment of Chapter 186 of 2009. Chapter 186 restricted death penalty eligibility only to cases in which the State presents the court or jury with (1) biological or DNA evidence that links the defendant with the act of murder; (2) a videotaped, voluntary interrogation and confession of the defendant to the murder; or (3) a video recording that conclusively links the defendant to the murder. A defendant may not be sentenced to death if the State relies solely on evidence provided by eyewitnesses in the case. According to the Office of the Attorney General, since enactment of Chapter 186, there are five active cases (two in Anne Arundel County, two in Baltimore County, and one in Prince George's County) in which a prosecutor has formally filed notice of the State's intention to seek the death penalty and one case pending notification (in Garrett County).

### Maryland Court Decisions

Executions in the State have been halted since the December 2006 decision by the Court of Appeals in *Evans v. State*, 396 Md. 256 (2006). In that case, the court heard arguments on an appeal of a death sentence by Vernon Evans, Jr. Evans' appeal was based on four claims, only one of which was considered to have merit by the court. The Court of Appeals upheld Evans' claim that the regulatory procedures for carrying out the death sentence, including execution by lethal injection, were adopted without the public input required by the Administrative Procedure Act (APA). The court held that the Division of Correction's protocols are ineffective until either (1) the protocols are adopted as regulations under the APA; or (2) the General Assembly exempts the protocols from the procedures required by the APA.

In 2011, the Court of Appeals narrowly reaffirmed the preponderance of the evidence standard used by jurors to consider the impact of aggravating and mitigating circumstances during the sentencing phase of a capital case. In *Miles v. State*, 2011 WL 4363914 (Md. App. Sept. 20, 2011) the Court determined that State law already requires that a jury must find the existence of an aggravating circumstance beyond a reasonable doubt. However, since the weighing of aggravating and mitigating circumstances is not a fact-finding procedure, but a

judgmental process in which the factors are balanced to determine the appropriateness of a death sentence, it is not unconstitutional for the balancing act to be based on the least stringent standard of preponderance of the evidence. The majority, quoting an earlier opinion of the court, also stated, however, that, as individual judges they might believe that a better public policy would be to require a jury to apply the most stringent standard of beyond a reasonable doubt to the weighing process, but that is a judgment for the legislature to make, and unlike its counterparts in other states, the General Assembly has chosen a different approach.

## Proposed Regulations

Proposed new regulations to implement the death penalty were published in the July 31, 2009 edition of the *Maryland Register*. Among other things, the proposed regulations would have:

- required the Commissioner of Correction to ensure that individuals assigned to the lethal injection team are trained and certified to administer the authorized pharmaceuticals used during the execution process and insert intravenous catheters into the inmate, if required;
- required a certified or contracted paramedic to be present to resuscitate the inmate if a stay of execution is granted; and
- permitted the continued use of pancuronium bromide as part of the lethal cocktail of drugs used during executions.

Death penalty opponents voiced numerous objections to the proposed regulations, particularly over the drugs administered, participation of medical personnel, and lack of specifics. Objections to the use of pancuronium bromide centered on the ability of this paralytic agent to completely immobilize an individual so that he or she would not be able to express pain or communicate regarding the effectiveness of the anesthetic. Pancuronium bromide is a muscle relaxant and is prohibited for use in animal euthanasia in Maryland and some other states. The regulations required that a physician be present to pronounce death, as well as the presence of trained or certified personnel to administer the drugs. (The presence of a physician is a requirement in about half of the 34 states that have the death penalty.) The American Medical Association Code of Medical Ethics states, however, that physicians should not participate in legally authorized executions. In 2010, the American Board of Anesthesiologists adopted a policy to revoke the certification of any member who participates in an execution by lethal injection. While an anesthesiologist may obtain a medical license without certification, most hospitals will not employ anesthesiologists who are not certified.

The Administrative, Executive, and Legislative Review Committee (AELR) also questioned the continued use of three drugs when the authorizing statute specifies that two drugs may be used to induce death. As for the lack of specifics, the regulations did not specify a limit

on the time the lethal injection team could take to find an inmate's vein or qualifications for members of the lethal injection team.

In September 2009, AELR formally requested that the Department of Public Safety and Correctional Services (DPSCS) delay final adoption of the death penalty procedure regulations so that the committee could conduct a more detailed study of the issues. On October 12, 2009, AELR placed the regulations on hold for further study. The regulations were withdrawn by operation of law, and the withdrawal notice was published in the October 22, 2010 issue of the *Maryland Register*. DPSCS then resubmitted proposed death penalty regulations that were published in the November 19, 2010 issue of the *Maryland Register*.

AELR informed DPSCS that it was dissatisfied with the reissuance of the regulations as they were substantially similar to the proposed regulations issued in 2009. The committee had already indicated strong concerns about their content, including (1) the use of a three drug protocol when the governing statute specifies two drugs; (2) the lack of specificity with regard to the procedures contained in the department's Lethal Injection Checklist, including the strength of dosages and the personnel responsible for preparation of injection syringes; (3) the absence of contingency plans in the event the execution did not proceed as planned; and (4) how DPSCS planned to address its reliance on sodium thiopental since the drug was no longer available for purchase in the United States.

By correspondence dated February 9, 2011, DPSCS informed AELR that the death penalty regulations proposed in November 2010 were being withdrawn due to the unavailability of sodium thiopental. DPSCS stated that it would re-submit the proposed regulations after review and modification in light of that development. As of October 2011, DPSCS had not re-submitted the regulations.

## **Status of the Death Penalty Nationally**

Thirty-four states have the death penalty. The Death Penalty Information Center reports that as of September 29, 2011, there were 3,251 inmates on death row in the United States, including inmates in the custody of the federal government and the U.S. military. Five of these death row inmates are in Maryland, giving Maryland the seventh smallest death row population in the nation. As of September, 37 inmates were executed in the United States in 2011, with Texas accounting for 11 of those executions. According to the Bureau of Justice Statistics, 112 defendants received death sentences in 2009. Illinois enacted legislation to repeal its death penalty in 2011, making it the most recent state to abolish the death penalty.





# **Criminal Law**

## **Synthetic Drugs**

**Most synthetic cannabinoids are illegal under the U.S. Drug Enforcement Administration's Schedule I. In addition, federal authorities have also temporarily banned three "bath salt" chemicals on an emergency basis. The Department of Health and Mental Hygiene has adopted emergency/proposed regulations to make five additional bath salt chemicals illegal in the State.**

### **Background**

The words "spice" and "bath salts" conjure up images of fine cuisine or relaxing in a hot tub. Unfortunately, these are also terms for a new wave of dangerous synthetic drugs that until recently could be found at local convenience stores and head shops, and remain widely available over the Internet. These products, said to mimic the effect of illegal drugs, were once totally legal. The federal government and many states across the nation are moving to change their status.

### **Synthetic Cannabinoids**

Synthetic cannabinoids are chemically engineered substances that are similar to THC, the active ingredient in marijuana. When smoked or ingested, these substances produce a high similar to marijuana, and they have rapidly become a popular alternative to marijuana. The substances are typically sprayed onto dried herbs and sold under names like "Spice," "K2," or "Genie." Synthetic cannabinoids have been linked to hallucinations, tachycardia, and seizures. In 2009, the American Association of Poison Control Centers documented 14 calls to poison control centers concerning synthetic cannabinoids. In 2010, the number had grown to 2,867. If calls continue at the reported pace, they should exceed 5,600 this year.

### **Bath Salts**

Mephedrone and MDPV (sometimes categorized as "substituted cathinones") are synthetic psychoactive stimulants that can produce side effects such as increased blood pressure, delusions, paranoia, and psychosis. The substances are sold in powder and tablet form and are chemically similar to compounds found in the khat plant of eastern Africa. They have amphetamine-like qualities, and users often report experiencing effects similar to cocaine, ecstasy, and methamphetamines. Mephedrone and MDPV are often marketed as "bath salts" and have street names like "Zoom 2," "Aura," "Cloud Nine," and "Meow-Meow." Published

research indicates that the products have been confirmed or suspected in more than 15 deaths nationwide.

## **Other States**

According to the National Conference of State Legislatures (NCSL), at least 38 states have adopted laws to ban chemical substances related to synthetic cannabinoids, and at least 30 states have banned certain bath salt chemicals.

## **Actions by Federal Drug Enforcement Administration**

On March 1, 2011, the U.S. Drug Enforcement Administration (DEA) invoked its “emergency scheduling authority” to make most synthetic cannabinoids illegal. These designer drugs are now on the DEA’s Schedule I, meaning that they have no accepted medical use and high potential for abuse. The emergency action will remain in effect for one year. On September 7, 2011, the DEA also announced that it would temporarily ban three bath salt chemicals on an emergency basis. The DEA bath salt ban took effect in October 2011 and will last one year, but may be extended beyond that period. During the ban, the DEA and the U.S. Department of Health and Human Services will study whether these chemicals should be permanently controlled.

## **Maryland Law**

Under Maryland law, if the federal government places a substance on Schedule I, it is automatically considered a Schedule I substance in the State unless the Department of Health and Mental Hygiene (DHMH) objects to the designation. Since DHMH has not raised an objection, the synthetic cannabinoids and bath salt chemicals designated by the DEA as Schedule I substances are currently illegal in Maryland.

Moreover, during the summer of 2011, DHMH adopted emergency/proposed regulations affirmatively adding five bath salt substances to Maryland’s Schedule I. On October 18, 2011, the General Assembly’s Administrative, Executive, and Legislative Review (AELR) Committee approved the emergency regulations. The permanent proposed regulations are expected to take effect in late December 2011.

# Courts and Civil Proceedings

## Civil Litigation Funding

<b>Advances of money by civil litigation funding companies provide financial assistance to plaintiffs to pursue fully their claims. The companies do not regard the advances as loans, but the Commissioner of Financial Regulation has determined otherwise.</b>
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### Background

Civil litigation funding companies advance money to plaintiffs (usually victims of personal injury). The funding is “nonrecourse,” so if the plaintiff loses, the company does not receive repayment. However, if the plaintiff wins, the company receives, to the extent of the plaintiff’s recovery from the defendant, repayment of the advanced principal plus fees calculated based on the time of repayment.

Proponents say that the funding provides plaintiffs with the option to pursue claims they would otherwise have to settle for a lower amount. Opponents say that funding companies prey on plaintiffs who may end up with a small portion of the value of the case after paying exorbitant fees.

### Maryland Consumer Lending Law

The Maryland Consumer Loan Law (MCLL) defines a “loan” as any loan or advance of money or credit made under the credit provisions of MCLL. A person may not make a loan, receive an application for a loan, or allow any note or contract for a loan to be signed without being licensed by the State. Under the MCLL, the Commissioner of Financial Regulation is responsible for regulating financial entities, including civil litigation funding companies. The maximum permissible annual interest rate (“usury cap”) for small loans (under \$6,000) varies with the amount of the loan, up to 33%.

### Recent Legislation

House Bill 873, which failed during the 2011 session, would have transferred regulatory responsibility from the Commissioner of Financial Regulation to the Secretary of State for commercial entities engaged in advancing money to a party in civil litigation. The legislation specified that civil litigation funding is not a loan and contained a fee schedule with maximum fees ranging from 45% of the funding amount if repayment occurs within 6 months after the funding date to 200% of the funding amount if repayment occurs 24 to 36 months after the

funding date. Similar bills were introduced in 2009 and 2010. All of these bills were in response to actions taken by the Commissioner of Financial Regulation.

## **Actions by Commissioner of Financial Regulation**

In 2009, the Commissioner of Financial Regulation issued a summary cease and desist order to Oasis Legal Finance, LLC (“Oasis”) for engaging in the business of making loans or advances to Maryland consumers without the proper licenses. Oasis denied the allegations in the summary order and asserted that civil litigation funding transactions are not “loans or advances.”

Oasis reached a settlement agreement with the commissioner in which Oasis denied the allegations in the order, denied liability, and continued to assert that its transactions were not “loans or advances.” However, Oasis did agree to several terms, including (1) not to conduct its litigation funding business in Maryland as long as the current law is in effect or until it becomes licensed under MCLL; and (2) to pay a settlement amount of \$105,000. In return, the commissioner agreed to vacate the cease and desist order and withdraw the scheduled administrative hearing on the order.

On February 4, 2011, the Commissioner of Financial Regulation issued a summary cease and desist order to American Legal Funding, LLC, in response to consumer complaints. According to the order, the company was engaged in the practice of making loans without being properly licensed in the State. While the company’s written agreements with the consumers did not provide the applicable interest rates, the commissioner concluded that based on the repayment schedule in the agreements, the consumers’ cash advances were subject to annual interest rates between 177% and 22,701%, depending on when the advances were repaid.

## **Legal Ethics**

The use of civil litigation funding presents several ethical concerns for an attorney, mainly in the areas of attorney-client privilege and interference in a lawsuit by a third party.

### **Attorney-client Privilege and Work Product Doctrine**

Because civil litigation funding companies do not recover any funds if a client does not win, companies conduct a risk assessment, requiring detailed information about the claim. While litigants applying for funds must first consent to this access to information, an attorney must be mindful to limit disclosure to necessary information and to advise the client of the potential for, and consequences of, waiver of attorney-client privilege.

Under the work product doctrine, materials prepared by an attorney in anticipation of litigation are protected from discovery by opposing counsel. Since a funding company may wish

to view these materials, disclosure of these materials by the attorney to the funding company may result in loss of the benefit of the work product doctrine.

### **Interference by a Third-party in a Lawsuit**

A lawyer is ethically bound to act in the best interest of his or her client. At times, there may be a conflict between the interests of the financing company (or which is trying to maximize its recovery) and the client (who is trying to obtain an acceptable recovery as soon as possible). In a 2011 formal opinion, the New York City Bar Association stated that “[w]hile a client may agree to permit a financing company to direct the strategy or other aspects of a lawsuit, absent client consent, a lawyer may not permit the company to influence his or her professional judgment in determining the course or strategy of the litigation, including the decisions of whether to settle or the amount to accept in any settlement.”

In 2010, the American Bar Association announced the creation of a workgroup to study the impact of civil litigation funding on legal ethics. The workgroup solicited comments on specific ethical issues and is in the process of developing reports and policy proposals, which may include amendments to the Model Rules of Professional Conduct.



# Courts and Civil Proceedings

## Dram Shop Liability

<b>Maryland is one of a minority of states that does not impose “dram shop” liability on an alcoholic beverage vendor for damages caused by an intoxicated or underage customer. A recent case has reopened the question of dram shop liability in Maryland.</b>
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### Background

Under well-settled common law, vendors of alcoholic beverages could not be held liable for the acts of intoxicated or underage customers. Through case law and statutes, most states have carved out exceptions to this common law principle in the form of “dram shop” laws, under which a seller of alcoholic beverages may be sued for injuries caused by an intoxicated or underage customer. Thirty-six states and the District of Columbia have dram shop laws applicable to intoxicated customers, while forty-three states have dram shop laws applicable to underage customers.

### Maryland Law

In a 1951 case involving a minor who became intoxicated at a tavern and killed a person while driving home, the Maryland Court of Appeals stated that according to the common law of the State, a tavern could not be held liable for the actions of an intoxicated patron who injured another person. *State v. Hatfield*, 197 Md. 249, 254-55 (1951). The court revisited the issue in a virtually identical case in 1981. While acknowledging that the number of jurisdictions with dram shop laws had grown, the court stated that the proper venue for such a change is the legislature. *Felder v. Butler*, 292 Md. 174 (1981). In April 2000, the Court of Special Appeals reiterated the reasoning in *Felder* when it declined to create a dram shop law. *Wright v. Sue & Charles, Inc.*, 131 Md. App. 466 (2000).

### Recent Case

An ongoing case in Montgomery County may open the door to the reconsideration of dram shop liability in Maryland. In 2008, 10-year-old Jazimen Warr was killed when her family’s vehicle was hit by a drunk driver, Michael D. Eaton. Jazimen’s half-sister, grandfather, and grandmother were also injured in the crash. The drunk driver pled guilty to vehicular manslaughter and leaving the scene of an accident involving injury and was sentenced to 20 years imprisonment with 12 years suspended and 5 years supervised probation.



In 2010, William J. Warr, Jr., Jazimen's grandfather, filed a lawsuit against the bar where Mr. Eaton had consumed 20 alcoholic beverages in six hours on the night of the crash. A motion to dismiss the case on the ground that Maryland law does not recognize dram shop liability was denied by the court. While acknowledging that Maryland law does not recognize dram shop liability, the court stated that "...the factual underpinnings of this case make a change in Maryland jurisprudence with respect to Dram Shop Liability ripe to the core."

The court noted that the *Felder* case recognized that the common law may change in response to changes in society and that judicial rulings "must keep pace with the world while constantly searching for fair and just solutions" to cases. The court cited the increase in drunk driving accidents since the *Hatfield* and *Felder* decisions and the relatively low level of enforcement of laws prohibiting the sale of alcohol to intoxicated persons as examples of relevant societal changes justifying a need to consider the establishment of dram shop liability in Maryland. The court also referred to public policy considerations and empirical data as justification for the creation of a civil duty on liquor licensees and the existence of a causal link between the service of alcohol to intoxicated customers and driving fatalities, respectively.

## 2011 Legislation

As a result of the Montgomery County case, House Bill 1120 was introduced in the 2011 session. The bill would have established dram shop liability when (1) an alcoholic beverage licensee or the licensee's employee knows or reasonably should have known that a customer is younger than age 21 or is visibly intoxicated; (2) the licensee or the licensee's employee can reasonably foresee that the customer may drive or attempt to drive a motor vehicle after consuming the alcoholic beverages; (3) after consuming the alcoholic beverages, the customer negligently drives or attempts to drive a motor vehicle; and (4) the customer's negligence in driving or attempting to drive a motor vehicle is a proximate cause of the damages claimed in a lawsuit. The bill received a hearing, but no further action was taken.

# Courts and Civil Proceedings

## Judicial Compensation

<p><b>The Judicial Compensation Commission recommended an increase of \$29,006 in the salary of each judge to be phased in over a four-year period beginning in fiscal 2014. The commission also recommended that the pension contribution rate be increased from 6% to 8% for judges appointed on or after July 1, 2012.</b></p>
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### Background

The Judicial Compensation Commission is charged with studying and making recommendations regarding all aspects of judicial compensation. The commission consists of seven members, all appointed to six-year terms by the Governor. Five of the members are appointed from lists of nominees as follows: two from a list of at least five nominees submitted by the President of the Senate, two from a list of at least five nominees submitted by the Speaker of the House of Delegates, and one from a list of at least three nominees submitted by the Maryland State Bar Association. The Governor also appoints two members at large.

The commission is required to review judicial salaries and pensions and make recommendations to the Governor and the General Assembly once every four years. A joint resolution incorporating the salary recommendations must be introduced in each house of the General Assembly by the fifteenth day of the session following the release of the commission's proposals. The General Assembly may amend the joint resolution to decrease, but not increase, any of the salary recommendations, and it may not reduce the salary of a judge during the judge's continuance in office. Failure by both houses of the General Assembly to adopt or amend a joint resolution within 50 calendar days after its introduction results in adoption of the salary recommendations. If the General Assembly rejects any of the commission's recommendations, the salaries of the judges remain unchanged, unless modified under other provisions of law.

The last salary increase for judges was generated by a four-year phased-in salary plan that was recommended by the commission in 2005 and implemented after the General Assembly did not adopt or amend the joint resolution containing the salary plan within 50 days after its introduction. Also in 2005, a provision prohibiting judges from receiving a cost-of-living adjustment in any year in which they receive a commission-recommended salary increase was enacted as part of the Budget Reconciliation and Financing Act (BRFA). The 2005 BRFA also limited the frequency of review of judicial compensation and recommendations by the commission by establishing a schedule of once every four years, instead of the prior requirements that the commission review judicial compensation every two years and make recommendations at least every four years.

The commission met in 2008 and made recommendations for a four-year phased-in salary plan that was introduced as Senate Joint Resolution 4/House Joint Resolution 2 of the 2009 session, however, no further action was taken on the joint resolutions. Instead, Chapter 2 of 2009, an emergency measure, established, for the 2009 session only, that the failure of the General Assembly to act on a joint resolution by the fiftieth day of session would not allow the recommended salary increases to become effective. In recognition of the failure to take salary action for the Judiciary, the time period for the commission's meeting schedule was altered to allow another meeting in the fall of 2009. This action aligned the schedule of the commission with the meeting schedules of the Governor's and General Assembly's compensation commissions. The commission voted to resubmit the same salary recommendations in the 2010 session, but the recommendations were rejected by the General Assembly and the BRFA of 2010 altered the meeting schedule of the commission again to allow for a review of salaries in 2011 and 2013, then every four years thereafter.

### **Salary and Pension Recommendations for the 2012 Session**

The commission met two times in 2011 to consider salary recommendations. The Department of Legislative Services provided information on the State's economic condition, the State retirement system, national and regional salary rankings for all levels of courts, and salary information for various Executive and Legislative branch officials. The commission also heard presentations from the Maryland Judiciary and the Maryland State Bar Association on the workload of the courts and obstacles to recruiting and retaining talented individuals on the bench.

In October 2011, the commission finalized its recommendations to increase the salaries of all Maryland judges by \$29,006 over the next four years. Joint resolutions that will be introduced in the 2012 session will propose that salaries remain at current levels through fiscal 2013, with salary increases to begin in fiscal 2014. Specifically, the joint resolution will propose the following annual salary increases for all judges at each of the seven levels: (1) \$9,111 beginning July 1, 2013; (2) \$9,658 beginning July 1, 2014; and (3) \$10,237 beginning July 1, 2015. Those changes, as well as current salary levels, are presented in **Exhibit 1**.

**Exhibit 1**  
**Current and Proposed Judicial Salaries**

<b><u>Position</u></b>	<b><u>Current Salary</u></b>	<b><u>Beginning 7/1/2013</u></b>	<b><u>Beginning 7/1/2014</u></b>	<b><u>Beginning 7/1/2015</u></b>	<b><u>Percent Change</u></b>
<b>Court of Appeals</b>					
Chief Judge	\$181,352	\$190,463	\$200,121	\$210,358	+ 16%
Associate Judge	\$162,352	\$171,463	\$181,121	\$191,358	+ 18%
<b>Court of Special Appeals</b>					
Chief Judge	\$152,552	\$161,663	\$171,321	\$181,558	+ 19%
Associate Judge	\$149,552	\$158,663	\$168,321	\$178,558	+ 19%
<b>Circuit Court</b>	\$140,352	\$149,463	\$159,121	\$169,358	+ 21%
<b>District Court</b>					
Chief Judge	\$149,552	\$158,663	\$168,321	\$178,558	+ 19%
Associate Judge	\$127,252	\$136,363	\$146,021	\$156,258	+ 23%

Source: Department of Legislative Services

The BRFA of 2011 also required the commission to include recommendations in its report on appropriate benefit and member contribution levels, which take into account the sustainability of the pension systems. Accordingly, the commission was provided information about the Maryland Judge's Retirement System as well as an overview of the status of other pension plans. The commission voted to recommend that the contribution rate for judges appointed on or after July 1, 2012, increase from 6% to 8%.



# Courts and Civil Proceedings

## Maryland Trust Act

**Banks and trust attorneys wish to enact a comprehensive codification of the law governing the creation and administration of trusts. Some stakeholders are concerned that certain provisions of the legislation would limit significantly the rights of beneficiaries of trusts.**

### Background

A trust is formed when property is transferred from one person to another to be held “in trust” for beneficiaries or a legally acknowledged beneficial purpose. The person receiving the property is the “trustee,” who is a fiduciary with enforceable obligations to the person who transferred the property and to the beneficiaries or beneficial purpose. Trusts are commonly used as part of an individual’s estate plan, to avoid probate and obtain favorable tax consequences. According to the Maryland State Bar Association, (MSBA) trusts are administered by a wide variety of professional and nonprofessional trustees.

The Maryland Code contains some statutes applicable to trusts but does not contain a comprehensive statement of the law of trusts. Where the statutory law does not resolve an issue, a practitioner may examine Maryland case law governing trusts, the Restatements of the Law of Trusts (treatises on American trust law), or case law from other jurisdictions. The Maryland Rules also contain provisions addressing procedural issues in litigated trust cases.

### Proposed Maryland Trust Act

In the 2011 session, two cross-filed bills (Senate Bill 745/House Bill 750) were introduced to establish the “Maryland Trust Act” (MTA), a comprehensive codification of the law of trusts, but the bills were not reported out of committee. MTA was the result of a number of years of work by MSBA and the Maryland Bankers Association (MBA) and is based generally on the Uniform Trust Code (UTC) drafted by the Uniform Law Commission (ULC). Versions of UTC have been enacted in 23 states and the District of Columbia.

MTA addressed a range of issues relating to trusts and generally incorporated the existing, statutory provisions governing trusts, with modifications. For example, among other things, the bills were intended to clarify (1) the duties and powers of a trustee and an advisor to a trustee; (2) the liability of a trustee and rights of persons dealing with a trustee; (3) claims of creditors against parties to a trust; and (4) authority to enter into non-judicial settlement agreements to resolve matters involving trusts.

The MTA would enact a comprehensive body of statutory trust law, to which trustees and beneficiaries can refer to better understand the law, and eliminate ambiguities in Maryland law where the courts in the State have not ruled on a particular issue. MTA would establish a set of largely default rules that apply where a trust instrument does not specify otherwise.

## **Interim Hearing**

A hearing on the proposed legislation was held by the House Judiciary Committee in October 2011. The Estate and Trust Law Section of MSBA and the MBA testified in support of MTA and indicated that it had been drafted to be a “codification – not a modification” of existing law, with additions only where there are ambiguities in the law. MBA provided a document describing the relation of various provisions of MTA to existing law, including a number of proposed additions.

In other testimony, however, representatives of the Maryland Association for Justice (MAJ), objected to some provisions of MTA. MAJ raised concerns that MTA would (1) shorten the statute of limitations that governs an action against a trustee; (2) lower the standard of care required of trustees; and (3) depart from well-settled Maryland law on issues of vicarious liability and the contribution expected from those who violate duties under a trust.

# Courts and Civil Proceedings

## Presumption of Joint Custody

**Proponents of presumptive joint custody maintain that it would encourage involvement by both parents in their child's life, while opponents assert that a presumption would change inappropriately the focus in a custody case from the "best interest of the child" to the rights of the parents.**

### Background

Currently, Maryland courts resolve child custody disputes based on a determination of "what is in the child's best interests." In a custody dispute between the child's parents, the court examines numerous factors and weighs the advantages and disadvantages of the alternative environments. The criteria for judicial determination includes, but is not limited to (1) the fitness of the parents; (2) the character and reputation of the parents; (3) the desire of the natural parents and any agreements between them; (4) the potential for maintaining natural family relations; (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment; (6) material opportunities affecting the future life of the child; (7) the age, health, and sex of the child; (8) the residences of the parents and the opportunity for visitation; (9) the length of the separation of the parents; and (10) whether there was a prior voluntary abandonment or surrender of custody of the child. *Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

Traditionally, when one parent was granted "custody" of a minor child, the other parent would generally be awarded visitation rights. In 1984, the Court of Appeals first recognized and applied the concept of "joint custody." See *Taylor v. Taylor*, 306 Md. 290 (1986). The *Taylor* Court explained that, within the meaning of "custody" are the concepts of "legal" and "physical" custody. Legal custody means the right and obligation to make long range decisions involving the education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare. With joint legal custody, both parents have an equal voice in making those decisions and neither parent's rights are superior to the other. Physical custody means the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody. Joint physical custody is in reality, "shared" or "divided" custody, with the child in the physical custody of each parent for periods of time that may or may not be on a 50/50 basis. *Taylor* at 296-297.

In addition to the factors set forth in the *Sanders* decision, a court considering an award of joint custody must also examine a range of factors particularly relevant to a determination of joint custody, including (1) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare; (2) the willingness of the parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the potential disruption of the child's social and school life; (7) the



geographic proximity of parental homes; (8) the demands of parental employment; (9) the age and number of children; (10) the sincerity of the parents' request; (11) the financial status of the parents; (12) any impact on state or federal assistance; (13) the benefit to the parents; and (14) any other factors the court considers appropriate. *Taylor* at 304-311. The *Taylor* Court emphasized that the single most important factor in the determination of whether an award of joint legal custody is appropriate is the capacity of the parents to communicate and to reach shared decisions affecting the child's welfare. *Taylor* at 305.

## Custody Outcomes in Maryland

Although the Maryland Judiciary does not keep statistics on custody outcomes, the Women's Law Center conducted a comprehensive study of divorce and custody cases filed in Maryland in fiscal 2003. See *Families in Transition: A Follow-Up Study Exploring Family Law Issues in Maryland*. The research sample included 1,268 cases that involved custody issues. Of the total number of cases in the sample, more than half (55%) resulted in some form of joint legal custody (joint legal with physical custody to mother, joint legal with physical custody to father, and joint legal and physical custody). The report concluded that the cases in which joint legal and/or physical custody were imposed by judicial intervention resulted in more subsequent litigation than when the parties agreed to it. Specifically, when the court ordered joint legal and physical custody, or when it ordered joint legal custody and primary physical custody to the fathers, subsequent litigation rates were the highest at 19% and 27%, respectively.

## Legislative Activity

In recent years, a number of unsuccessful measures have been introduced to create a statutory preference for or a rebuttable presumption of joint legal and physical custody. Most recently, legislation introduced during the 2011 legislative session would have created a rebuttable presumption that it is in a child's best interest to award joint legal custody and physical custody to each parent for approximately equal periods of time.

Those in favor of presumptive joint custody argue that it preserves connections and allows a child to enjoy a meaningful relationship with both parents, which can reduce the traumatic effects on the child that can result from the dissolution of the marriage. Additionally, proponents assert that joint custody is an important symbolic statement that serves to encourage continued involvement of the nonresidential parent, rather than relegating that parent to the status of a "visitor" in the life of the child. Proponents argue that in cases in which both parents are fit to provide for the children, the judicial process of determining which parent should receive sole custody is time-consuming, difficult, and uncertain.

Those opposed to amending the law to create a presumption of joint custody argue that joint custody is already a frequent outcome in child custody cases; therefore, a presumption is unnecessary. It is also asserted that a presumption of joint custody would negate the inquiry trial

courts are required to make under the *Taylor* decision regarding the capacity of the parents to communicate and reach shared decisions regarding the child's welfare, and instead would make it more likely that joint custody would be imposed in inappropriate situations and create unnecessary suffering for children who would become the subject of endless fighting between parents. Opponents stress that placing a presumption of joint custody in the law would take the focus off of the current "best interest of the child" standard and instead inappropriately refocus child custody decisions on the rights of the parents.

Finally, advocates for victims of domestic violence argue that joint custody orders allow physical abuse and emotional intimidation of domestic violence victims to continue by forcing victims to negotiate and compromise with their batterers, thus placing victims in danger of further violence.

## **Laws of Other States**

A review of state statutes by the Department of Legislative Services in 2011 found eight states with a presumption that joint custody is in the best interest of the child. An additional eight states have a presumption that joint custody is in the best interest of the child only if the parents agree. Two states require courts to award joint custody if the parents agree to it. Seventeen states have presumptions that joint custody is not in the best interest of the child if there is a history of domestic violence, and two states prohibit courts from awarding joint custody if there is a history of domestic violence.



# Courts and Civil Proceedings

## Same-sex Marriages, Civil Unions, and Domestic Partnerships

**Following the failure of a bill to legalize same-sex marriage in Maryland during the 2011 session, New York became the fifth state to legalize it. The Governor has announced his intention to propose similar legislation in 2012.**

### Background

“Same-sex marriage” means a legal marriage between two individuals of the same gender. A “civil union” provides same-sex partners with the same legal rights, protections, and responsibilities under state law as married couples. Generally, these rights are recognized only in the state in which the couple resides. A “domestic partnership” extends certain rights under state or local law to unmarried couples, including (but not necessarily limited to) same-sex couples.

### State Action

#### Same-sex Marriage Legalized

Massachusetts became the first state to issue marriage licenses to same-sex couples in 2004 after its highest court ruled that authorizing civil unions for same-sex couples while prohibiting them from marrying was unconstitutional. Same-sex marriage is now legal in five other states (Connecticut (2008), Iowa (2009), Vermont (2009), New Hampshire (2010), and New York (2011)), and in the District of Columbia (2010).

#### Same-sex Marriage Prohibited

Forty-one states (including Maryland) have laws that either prohibit same-sex marriages or deny recognition of same-sex marriages solemnized in another jurisdiction. Because statutory bans have been viewed as providing limited protection against a constitutional challenge, many states have also amended their constitutions to limit marriage to opposite sex couples. To date, 30 states have adopted constitutional amendments that define marriage as a union between a man and a woman. California’s constitutional ban on same-sex marriage has recently been subject to challenge. In August 2010, a federal district court ruled that the state’s constitutional prohibition against same-sex marriage is unconstitutional under the federal constitution. That ruling has been stayed pending an appeal.

## **Civil Unions, Domestic Partnerships, and Partner Benefits**

Five states (Delaware, Hawaii, Illinois, New Jersey, and Rhode Island) recognize civil unions. California, Colorado, Hawaii, Maine, Nevada, Oregon, Washington, Wisconsin, and the District of Columbia have created domestic partnership laws that offer varying subsets of the rights and responsibilities of marriage under the laws of those jurisdictions.

Nineteen states, including Maryland, as well as numerous local jurisdictions, offer benefits for same-sex partners of state or local government employees. As of fiscal 2010, Maryland offers its employees health insurance coverage for their same-sex partners.

## **Federal Law**

The federal Defense of Marriage Act of 1996 (DOMA) defines marriage for federal purposes as a legal union between a man and a woman only. DOMA also allows states to deny recognition of a public act, record, or judicial proceeding of any other state respecting a relationship between persons of the same sex that is treated as a marriage under the laws of the other state.

The General Accounting Office has estimated that there are at least 1,138 federal statutory provisions in which marital status is a factor in determining or receiving benefits, rights, and privileges, including provisions relating to Social Security, taxes, and health care.

Two cases filed in federal court in Massachusetts challenged the constitutionality of DOMA based on Fifth Amendment equal protection principles and the Tenth Amendment right of a state to define marriage. In July 2010, the court ruled unconstitutional the section of DOMA that defined marriage “as a legal union exclusively between one man and one woman.” That decision is on appeal. Other cases in other federal circuits challenging DOMA have been filed. In February 2011, the U.S. Department of Justice announced it would no longer defend this section of DOMA as constitutional because it has concluded that classifications based on sexual orientation should be subjected to a heightened standard of scrutiny. In its opinion, this section of DOMA, as applied to legally married same-sex couples, fails to meet that standard.

## **Maryland Law**

In 1973, Maryland enacted a law providing that only a marriage between a man and a woman is valid in the State. The Court of Appeals upheld the constitutionality of the law in *Conaway v. Deane*, 401 Md. 219 (2007); however, the court cautioned that the opinion “should by no means be read to imply that the General Assembly may not grant and recognize for homosexual persons civil unions or the right to marry a person of the same sex.” *Id.* at 325.

## **Recognition of Same-sex Marriages from Other States**

Under the Full Faith and Credit Clause of the U.S. Constitution, states are required to give full faith and credit to the public acts, records, and judicial proceedings of every other state. Therefore, Maryland generally recognizes foreign marriages that are validly entered into in another state. However, the Full Faith and Credit Clause does not require a state to apply another state's law in violation of its own legitimate public policy.

In February 2010, the Attorney General of Maryland issued a formal opinion on the question of whether Maryland would recognize same-sex marriages legally performed in other jurisdictions. The Attorney General concluded that, although not free from all doubt, the Court of Appeals "...is likely to respect the law of other states and recognize a same-sex marriage contracted validly in another jurisdiction." 95 Op. Att'y Gen. 3 (2010) at 54. The opinion advised that in light of evolving State public policies that favor, at least for some purposes, domestic partnerships and same-sex intimate relationships, the court would not readily invoke the public policy exception to the general rule of recognition of out-of-state marriages.

Following the opinion, the State Department of Budget and Management amended regulations relating to State employees' health benefits to redefine "spouse" without reference to gender as "an individual who is lawfully joined in marriage to an employee or retired employee as recognized by the laws of the State of Maryland."

Recently, the State Retirement Agency adopted a regulation requiring the agency to administer benefits for a same-gender spouse of a lawfully recognized marriage in the same manner as benefits are administered for an opposite-gender spouse, including the payment of spousal death or survivor benefits. According to the regulation, however, the agency may not recognize a same-sex marriage in administering benefits if the recognition is inconsistent with requirements under the Internal Revenue Code, or when the recognition would violate other federal or State laws.

## **Unresolved Issues**

Legislation was introduced in the 2011 session to establish that a marriage between two individuals who are not otherwise prohibited from marrying is valid in the State. The bill passed the Senate but was recommitted to the House Judiciary Committee. Following the enactment of a law legalizing same-sex marriage in New York in June 2011, Governor Martin O'Malley announced that a similar bill would be part of his 2012 legislative package.

Based on previous years' legislative proposals, the legislature may also be asked in the upcoming session to consider measures to (1) amend the State Constitution to either ban or authorize same-sex marriages; (2) ban State recognition of same-sex marriages performed in other jurisdictions; and (3) place a moratorium on State recognition of out-of-state same-sex marriages until the issue is addressed and decided by an opinion of the Maryland Court of Appeals or by an enactment of the Maryland General Assembly.



# Courts and Civil Proceedings

## Transgender Discrimination

**Maryland does not have a statute prohibiting discrimination against transgender individuals in employment, housing, and places of public accommodation, and transgender individuals have been largely unsuccessful at convincing courts that transgender discrimination is a form of sex discrimination.**

### State Laws and Executive Orders

Thirteen states and the District of Columbia prohibit discrimination against transgender individuals in statute.<sup>1</sup> Six of these states prohibit discrimination based on “gender identity” or “gender identity or expression” and six states prohibit discrimination based on “sexual orientation,” which is defined in those states to include gender identity or transgender status. California prohibits discrimination based on “sex,” which is defined to include “a person’s gender identity and gender related appearance and behavior whether or not stereotypically associated with the person’s assigned sex at birth.” In each state that has prohibited discrimination by statute, discrimination is prohibited in employment, housing, and places of public accommodation. Over 100 cities and counties also prohibit gender identity discrimination.<sup>2</sup>

While Baltimore City and Montgomery County have passed local measures prohibiting gender identity discrimination, State law in Maryland does not currently contain such a prohibition. Unsuccessful legislation was introduced during the 2011 session to prohibit discrimination in the State based on gender identity in housing and employment and by persons regulated by the Commissioner of Financial Regulation. The measure also would have prohibited discrimination based on gender identity in State personnel actions. Bills that would have prohibited gender identity discrimination in housing, employment, and public accommodations were offered in the four previous legislative sessions.

Governor Martin O’Malley issued an executive order in August 2007 that included gender identity and expression as a proscribed basis for employment discrimination. Five other states have prohibited discrimination in public-sector employment by executive order.<sup>3</sup>

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<sup>1</sup>The 13 states are California, Colorado, Hawaii, Illinois, Iowa, Maine, Minnesota, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington.

<sup>2</sup>Local jurisdictions that have prohibited discrimination based on gender identity include Atlanta, Boston, Dallas, New Orleans, New York City, and Philadelphia.

<sup>3</sup>Those states are Indiana, Kansas, Kentucky, Ohio, and Pennsylvania.



## Gender Identity Discrimination as Sex Discrimination

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Transgender individuals have brought suit alleging “sex discrimination” under Title VII, often basing their claims on *Price Waterhouse v. Hopkins*, a Supreme Court case that held that harassment directed at a person because that person does not conform to traditional sex stereotypes is a form of sex discrimination prohibited by Title VII. 490 U.S. 228 (1989). In *Price Waterhouse*, however, the plaintiff was not a transgender individual, but a woman who was denied promotions because she lacked stereotypical femininity.

Few courts have accepted the claim that transgender discrimination is a form of sex discrimination. In 1977, the Ninth Circuit Court of Appeals held that Title VII did not extend protection to transsexuals, reasoning that Congress’ purpose in enacting the statute was only to ensure that men and women are treated equally. *Holloway v. Arthur Andersen & Co.*, 566 F.2d 659, 663 (9th Cir. 1977). A few years later, the Seventh Circuit held that discrimination based on sex means only that “it is unlawful to discriminate against women because they are women and against men because they are men,” and that Title VII was never intended to apply to anything other than the traditional concept of sex. *Ulane v. Eastern Airlines*, 742 F.2d 1081, 1085 (7<sup>th</sup> Cir. 1981). More recently, the Tenth Circuit also held that because “sex” means nothing more than “male and female,” the statute only extends protection to transsexual employees if they are discriminated against because they are male or because they are female. *Etsitty v. Utah Transit Authority*, 502 F.2d 1215, 1222 (10th Cir. 2005).

In 2008, the U.S. District Court for the District of Columbia heard a claim of employment discrimination by a transgender person. In response to the plaintiff’s claim of sex stereotyping, the court agreed that “when the plaintiff is transsexual, direct evidence of discrimination based on sex stereotypes may look a great deal like discrimination based on transsexuality itself, a characteristic that, in and of itself, nearly all federal courts have said is unprotected by Title VII.” However, the court found in favor of the plaintiff on the sex discrimination claim because it held that the refusal to hire the plaintiff after being advised that she planned to change her anatomical sex was, in fact, discrimination because of sex. *Schroer v. Billington*, 577 F. Supp.2d 293 (D.D.C. 2008).

Human relations commissions in Connecticut and Massachusetts have authorized transgender discrimination claims on the basis of sex discrimination. In 2000, the Connecticut Commission on Human Rights and Opportunities declared that discrimination based on gender identity or expression constitutes sex discrimination, concluding that sexual stereotyping was a form of sex discrimination. A year later, the Massachusetts Commission Against Discrimination concluded that sex discrimination includes discrimination against transsexual individuals. The commission reasoned that distinguishing between discrimination based on *change of sex* and discrimination *based on sex* would not constitute a valid defense in other cases of discrimination. For example, disparate treatment by an employer based on an employee’s change in religious affiliation would not garner a different analysis than discrimination based on the employee’s religious affiliation. Therefore, the commission determined that there should be no difference when the change was to a person’s sex.

# Courts and Civil Proceedings

## Ground Rents

**Two court cases have challenged the constitutionality of laws enacted in 2007 that changed the ground rent system in the State. A recent decision by the Court of Appeals invalidated a provision that extinguished a ground lease holder's reversionary interest for failure to register a ground lease with the State Department of Assessments and Taxation. Another case pending in the Circuit Court for Anne Arundel County challenges a measure that eliminated the remedy of ejectment for failure to pay ground rent.**

### Background

Ground rents have been a form of property holding in Maryland since colonial times, with some of the earliest known leases dating to 1750. The use of ground rents in the State saw increased use following World War II, as returning members of the military sought affordable housing. Historically, ground rents could reduce the purchase price for a home buyer, thus enabling the buyer to afford a mortgage. However, in today's economic climate, ground rents have little or no effect on the sale price of a home and provide questionable financial benefit for the homeowner.

While ground rents are recognized in other states, Maryland's system is unique. In Maryland, a ground rent creates a leasehold estate in a grantee. The leasehold estate is personal – not real – property. The grantor retains a reversion in the ground rent property and the fee simple title to the land. Ground rents generally have a 99-year term and are renewable perpetually. Ground rent is paid to the grantor (the ground rent holder) for the use of the property for the term of the lease in annual or semiannual installments. Under a typical ground lease, the tenant agrees to pay all fees, taxes, and other costs associated with ownership of the property.

Prior to 2007, when a tenant failed to pay rent, the ground rent holder could bring an action for the past-due rent or an ejectment action to take possession of the premises. Because the tenant has a leasehold estate, a tenant whose property was seized in an ejectment action received no other compensation.

### 2007 Legislation

Ground rents became an issue in Maryland after a series of articles published by the *Baltimore Sun* in December 2006 that reported the troubles of homeowners who had their homes seized due to nonpayment of the relatively small amounts they owed for ground rent. Homeowners reportedly were required to pay exorbitant fees to avoid ejectment and the loss of all the equity in their homes. Often, because of the age of the ground rent, homeowners were

unaware of the existence of a ground rent obligation until notified of a pending action for ejectment. The newspaper articles discussed a sharp increase in the number of ejectment actions filed in Baltimore City from 2001 to 2006. Chapter 1 of 2007 was enacted as emergency legislation to prohibit the creation of any new residential ground rents on or after January 22, 2007.

A number of other laws were enacted in 2007 to make the system governing those ground rents created before January 22, 2007, more equitable to homeowners. Among other things, these laws required ground rent holders to communicate more effectively about ground rent obligations, encouraged homeowners to redeem ground rents so they could obtain fee simple title, eliminated the remedy of ejectment and replaced it with a process to create a lien, and established an online registration system for ground rents to be maintained by the State Department of Assessments and Taxation (SDAT).

## **Validity of Ground Rent Laws Challenged**

Two court cases, in particular, have challenged the constitutionality of some of the laws that changed the ground rent system. Among other things, plaintiffs have claimed that the laws illegally allow the State to take private property without just compensation. The Court of Appeals has issued a ruling in one case, and the other case is pending in the Circuit Court for Anne Arundel County.

On October 25, 2011, the Court of Appeals held, in *Muskin v. State Department of Assessments and Taxation* (No. 140, Sept. Term, 2010), that the extinguishment and transfer provisions of Chapter 290 of 2007 are invalid under Maryland law. Chapter 290 required SDAT to maintain an online registry of existing ground rent leases and authorized extinguishment of a ground lease holder's reversionary interest and transfer of the interest to the homeowner in the event of the ground lease holder's failure to register with SDAT.

In the *Muskin* case, the plaintiff was the trustee for two trusts that owned 300 ground rent leases in Baltimore City. Instead of registering the ground rent leases on behalf of the trusts, Mr. Muskin filed suit in the Circuit Court for Anne Arundel County requesting a declaratory judgment and injunction on the grounds that the ground lease registration program was unconstitutional. The Court of Appeals agreed with the plaintiff that the provisions authorizing extinguishment of ground rent leases and transfer of property rights to homeowners are unconstitutional under the Maryland Declaration of Rights and the Maryland Constitution, as they retroactively diminished the vested property rights of ground lease holders. The court stated that Chapter 290 unconstitutionally takes private property from ground lease holders without just compensation. The court also indicated that the law's flaws included the absence of notice and an opportunity for a hearing before the extinguishment of a ground lease holder's reversionary interest. The court suggested that alternative statutory approaches might include one where failure to register a ground lease triggers an interim consequence, such as restrictions on collecting ground rents prospectively or a denial of access to the courts for collection of unregistered ground rents.

However, the court disagreed with the plaintiff about the registration program and held that it was constitutional. The court determined that the registration requirement is permissible because it is not an arbitrary requirement, it is not unduly burdensome, and it regulates the future actions of ground rent holders. Although the court left the registration requirement in place, the invalidation of the extinguishment provision effectively eliminated any incentive to register.

According to news reports in the *Baltimore Sun*, some ground lease holders who were subject to the extinguishment and transfer provisions of Chapter 290 have reinstated their ground leases and begun collecting ground rent from homeowners.

The case of *Stanley Goldberg, et al. v. State* (case 02-C-07-126810), which is pending in the Circuit Court for Anne Arundel County, contests the constitutionality of Chapter 286 of 2007. Chapter 286 eliminated ejectment as a remedy for nonpayment of ground rent and replaced it with a process to create and foreclose on a lien. The plaintiff claims that the retroactive elimination of the remedy of ejectment amounts to a taking of private property without just compensation. In May 2007, the Office of Attorney General stated in its bill review letter that the legislation appears to be constitutional. The Attorney General reasoned that although the Maryland Constitution prohibits legislation that retroactively abrogates vested property rights, the Court of Appeals has also indicated, through a long line of cases, that a person does not have a vested right in a particular legal remedy. Ejectment appears to be a remedy, not a property right, according to well-settled precedent.



# Environment and Natural Resources

## Chesapeake Bay Restoration: Achieving Pollution Reduction Goals

**Efforts to meet the federally mandated Total Maximum Daily Load for the Chesapeake Bay are underway. Policy and funding decisions related to this effort will likely garner significant attention during the 2012 session.**

### Background

Past efforts to restore the Chesapeake Bay watershed, which includes parts of Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia, have resulted in insufficient progress and continued poor water quality. However, a new regional restoration initiative, prompted by federal requirements and characterized by accountability measures and shorter term program evaluation, is underway.

### Chesapeake Bay Total Maximum Daily Load

In December 2010, the U.S. Environmental Protection Agency (EPA) established the first baywide Total Maximum Daily Load (TMDL) that (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 1** illustrates Maryland's pollution reduction goals in the TMDL. All pollution reduction measures must be in place by **2025**, with at least 60% of the actions complete by **2017**. Maryland has committed to an accelerated schedule requiring all measures to be in place by **2020** and 70% of the actions to be complete by **2017**.

**Exhibit 1**  
**Maryland's Pollution Reduction Goals in the Bay TMDL**  
**(Million Pounds Per Year)**

<u>Pollutant</u>	<u>2009 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	49.42	39.09	21%
Phosphorus	3.30	2.72	18%
Sediment	1,386.65	1,218.10	14%

TMDL: Total Maximum Daily Load

Note: Historical load estimates and target loads are expected to change as the U.S. Environmental Protection Agency revises its computer modeling.

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

## **Achieving the Bay TMDL: An Accountability Framework**

### **Milestones and Watershed Implementation Plans**

In May 2009, President Barack Obama issued an executive order that directed the federal government to lead a renewed effort to restore the bay and its watershed. At the same time, the bay jurisdictions committed to developing two-year milestones to reduce pollution to the bay. As part of this effort, jurisdictions must submit pollution reduction progress and program action information to EPA. Although the milestones were developed prior to the establishment of the bay's TMDL, they have been incorporated into the TMDL process as a series of checkpoints for assessing progress toward achieving the pollution reduction goals in the TMDL.

In **2010**, each bay jurisdiction submitted a Phase I Watershed Implementation Plan (WIP) that details how the jurisdiction will achieve its individual pollution reduction goals under the TMDL. The bay jurisdictions are now developing Phase II WIPs to establish strategies to implement the bay's TMDL on a geographically smaller scale. The State's Phase I WIP estimates that current actions will achieve 53% of the **2017** target for nitrogen and 80% of the **2017** target for phosphorus. The Phase I WIP focuses on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before **2017**; (2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements.

EPA will review each jurisdiction's progress towards its two-year milestones. If a jurisdiction's plans are inadequate or if its progress is insufficient, EPA may take action to ensure pollution reductions, including increasing oversight of state-issued pollution permits, requiring additional pollution reductions, prohibiting new or expanded pollution discharges, redirecting federal grants, and revising water quality standards to better protect local and downstream waters.

### **Implementation Costs: A Significant Shortfall Projected**

As shown in **Exhibit 2**, the cost associated with implementing the Phase I WIP, covering calendar 2010 to 2017, is estimated to total approximately \$11.1 billion. The fiscal 2012 costs to the State, local governments, and other entities are not separately identified in the plan and are not known at this time. However, there are a number of current State programs that provide funding for actions identified in the plan. Existing State funding sources are projected by the Department of Legislative Services to provide approximately \$2.8 billion between fiscal 2010 and 2017, leaving a projected funding shortfall of about \$8.3 billion over this time period.

Two major sectors will likely demand significant State and local government funding during the calendar 2012 to 2017 period: wastewater treatment plant upgrades and stormwater retrofits. Additional implementation costs will be borne in future years.

**Exhibit 2**  
**Estimated Cost of Maryland's Phase I Watershed Implementation Plan**  
**Calendar 2010-2017**  
**(\$ in Billions)**

<b><u>Sector</u></b>	<b><u>Best Management Practices</u></b>	<b><u>Implementation Cost<sup>1</sup></u></b>	<b><u>Available Funding<sup>2</sup></u></b>	<b><u>Shortfall</u></b>
Urban Stormwater	Stormwater upgrades; lawn fertilizer regulation; stream restoration; and tree planting	\$4.283	\$0.107	-\$4.176
Air	Maryland Healthy Air Act; diesel engine retrofit; and low emission vehicle requirement	2.701	0.000	-2.701
Point Sources	Upgrades for wastewater treatment plants and sewer overflows	3.381	2.294	-1.087
Septics	Septic system upgrades and hookups	0.474	0.071	-0.403
Natural Filters on Public Land	Tree and grass buffers; and wetland restoration	0.025	0.023	-0.002
Agriculture	Land management; animal wastes and phosphorus; and managing fertilizer	0.203	0.267	+0.064
<b>Total</b>		<b>\$11.067</b>	<b>\$2.762</b>	<b>\$8.305</b>

<sup>1</sup> Implementation cost from calendar 2010 through 2017 based on information provided in the Watershed Implementation Plan.

<sup>2</sup> Available funding from fiscal 2010 through 2017. This includes special, federal, and general obligation bond funding included in the 2011 *Capital Improvement Program* for most capital projects, projected funding for the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund, projected funding for the Bay Restoration Fund, and projected funding from the Transportation Trust Fund for the State Highway Administration's stormwater costs.

Source: Maryland's Final Phase I Watershed Implementation Plan, Department of Legislative Services

## Policy Implications

Efforts to achieve bay restoration goals are expected to continue to demand significant local, State, and federal policy attention. Bay restoration program costs far exceed current resources and may prompt legislative proposals that establish new funding sources and redistribute existing funds. Several proposals relating to the implementation of the WIP were introduced during the 2011 special session; these proposals may resurface during the 2012 session.





# **Environment and Natural Resources**

## **Wastewater Disposal: Addressing the Bay Restoration Fund Deficit and Sustainable Growth**

**A number of proposals aimed at furthering the State's compliance with the federally mandated Total Maximum Daily Load are expected, including an increase in the bay restoration fee and a restructuring of the fund to focus on measures to reduce pollution from developed lands. Other policy proposals relating to smart growth and reducing pollution from existing and future development are also anticipated.**

### **Background**

The Bay Restoration Fund (BRF) was created in 2004 to address the deterioration of the Chesapeake Bay caused by excessive phosphorus, nitrogen, and sediment runoff. The dedicated fund is principally used to support upgrades to Maryland's 67 major publicly owned wastewater treatment plants (WWTP) with enhanced nutrient removal (ENR) technology; funds are also used for septic system upgrade grants and the Cover Crop Program within the Maryland Department of Agriculture. The fund is supported by a bay restoration fee on users of WWTPs and septic systems. The fee is generally \$30 per year for residential users and \$30 per year per equivalent dwelling unit (EDU) for commercial and industrial users, not to exceed \$120,000 per year. Revenue for the ENR upgrades has averaged approximately \$55.6 million per year between fiscal 2006 and 2011.

Upgrading the State's major WWTPs with ENR technology by 2017 is a key pollution-reduction strategy identified in the State's Phase I Watershed Implementation Plan (WIP), which is the State's roadmap to achieving the nutrient pollution limits required under the federally mandated Total Maximum Daily Load (TMDL), or "pollution diet" for the Chesapeake Bay watershed.

### **The Fund Has a Deficit**

While the estimated capital costs of upgrading the major WWTPs with ENR technology were originally \$750.0 million to \$1.0 billion, engineering estimates now indicate total costs of about \$1.38 billion. However, based on data provided by the Maryland Department of the Environment (MDE), projected revenues available for grant awards (from the bay restoration fee and bond proceeds) total only approximately \$1.002 billion. Thus, a deficit of about \$382.6 million is expected for the program. Unless addressed in some way, the funding shortfall may jeopardize the State's ability to meet the pollution limits identified in the TMDL. In order to comply with federal permits, any WWTP not upgraded with State funding will likely be required to upgrade using local funding.

## The Bay Restoration Fund Advisory Committee Recommends a Fee Increase

The Bay Restoration Fund Advisory Committee (BRFAC) is charged with making recommendations regarding any increase in the bay restoration fee deemed necessary to meet the financing needs of the fund. The committee's recommendation is to increase the fee from \$30 to \$60 per year per EDU. However, the committee made its recommendation before the implications of the State's debt capacity limitations were recognized. Due to these limitations, MDE will not be able to issue revenue bonds in excess of the \$530.0 million already authorized for the program, even with increased fee revenue. Thus, an estimated \$86.8 million shortfall will remain even with a 100% fee increase under the timeline of ENR upgrades required by the WIP. In order to complete the ENR upgrades by 2017 without issuing any additional State debt, the Department of Legislative Services estimates that a 130% increase in the fee (from \$30 to \$69 per year per EDU) is required. Under such an increase, once the 67 upgrades are completed, a fund balance is projected, as the only significant fund expenditure that would remain is the debt service on the revenue bonds that have already been authorized for the program. Thus, beginning in fiscal 2018, the fee could be reduced to \$30 per year per EDU or the BRF could be used for other activities (for example, to provide grants to upgrade smaller WWTPs with ENR technology).

**Exhibit 1** summarizes the cash flow of the BRF under three scenarios: (1) current law (showing a \$382.6 million shortfall to complete the upgrades by 2017); (2) a 100% fee increase (showing an \$86.8 million shortfall to complete the upgrades by 2017); and (3) a 130% fee increase, which provides sufficient funding to complete the upgrades by 2017.

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### Exhibit 1 Bay Restoration Fund Forecast under Three Scenarios (Current Law, 100% Fee Increase, and 130% Fee Increase) Fiscal 2012-2018 (\$ in Millions)

	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
<b><i>Current Law Forecasted Shortfall</i></b>							
Total Revenues	\$126.6	\$158.5	\$235.2	\$206.1	\$58.2	\$58.8	\$59.4
Total Expenditures	280.5	260.1	300.1	286.1	190.4	125.6	64.5
<b>Ending Balance</b>	<b>\$68.0</b>	<b>-\$33.7</b>	<b>-\$98.6</b>	<b>-\$178.5</b>	<b>-\$310.7</b>	<b>-\$377.6</b>	<b>-\$382.6</b>
<b><i>100% Fee Increase</i></b>							
Total Revenues	\$126.6	\$215.0	\$295.3	\$266.7	\$117.4	\$117.5	\$118.7
Total Expenditures	280.5	261.0	301.0	286.9	191.3	126.5	65.3
<b>Ending Balance</b>	<b>\$68.0</b>	<b>\$21.9</b>	<b>\$16.2</b>	<b>-\$3.9</b>	<b>-\$77.8</b>	<b>-\$86.8</b>	<b>-\$33.4</b>
<b><i>130% Fee Increase</i></b>							
Total Revenues	\$76.1	\$240.8	\$301.5	\$284.0	\$185.3	\$137.2	\$139.5
Total Expenditures	280.5	256.3	297.2	282.2	186.6	126.7	65.6
<b>Ending Balance</b>	<b>\$17.5</b>	<b>\$2.0</b>	<b>\$6.3</b>	<b>\$8.1</b>	<b>\$6.8</b>	<b>\$17.3</b>	<b>\$91.2</b>

Note: All three scenarios assume \$530.0 million in revenue bonds issued, but the timing of the bond issuances varies across scenarios. For instance, under the 130% fee increase scenario the issuance is shifted to later years relative to the other two scenarios and therefore the total revenues are lower in fiscal 2012.

Source: Maryland Department of the Environment; Department of Legislative Services

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## The Task Force on Sustainable Growth and Wastewater Disposal

During the 2011 session, the General Assembly considered the Sustainable Growth and Agricultural Preservation Act of 2011 (Senate Bill 846/House Bill 1107), which would have prohibited major residential subdivisions served by septic systems or minor subdivisions served by septic systems that do not use Best Available Technology for nitrogen removal (BAT). Bill hearings were held in the Senate and the House, but no further action was taken. To continue the discussions initiated by that legislation, Governor Martin J. O'Malley established the Task Force on Sustainable Growth and Wastewater Disposal. The task force, which must report its findings by December 1, 2011, is expected to make findings and recommendations related to the following:

- **Septic Systems** – the use, operation, and maintenance of shared and community septic systems; the development of regulations for the operation and maintenance of septic systems using BAT; and whether the State should require BAT for all septic systems in the State;
- **Priority Funding Areas (PFAs)** – ways to direct growth and create incentives for developing in priority funding areas (PFAs); and streamlining State building codes to encourage redevelopment in PFAs;
- **Major Residential Developments** – whether there is the need for a state-level review process for major residential developments that will be served by septic systems;
- **TMDL Deadline** – pushing back Maryland's TMDL compliance deadline to 2025 or later; and
- **Bay Restoration Fund** – restructuring the BRF to not only address the existing deficit in the fund but also to address other solutions for reducing nutrient and sediment runoff from developed lands as identified in the WIP.

## Implications for the 2012 Session

BRFAC is expected to submit its annual report in January 2012 with a recommendation to double the bay restoration fee to reduce the existing deficit. Meanwhile, it is anticipated that the Task Force on Sustainable Growth and Wastewater Disposal will recommend increases in the

bay restoration fee that exceed the amounts recommended by BRFAC; as of October 2011, the task force was discussing recommending a 100% fee increase in fiscal 2013 (\$60 per year per EDU); a 200% fee increase in fiscal 2015 (\$90 per year per EDU); and indexing the fee to the Consumer Price Index beginning in fiscal 2016. The task force may also recommend expanding the authorized uses of the BRF to include stormwater retrofits, while eliminating funding from the BRF for the Cover Crop Program, but requiring that the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund provide funding in an amount equal to no less than what the program received from both sources in fiscal 2012.

# **Environment and Natural Resources**

## **A Plan for Development in Maryland**

<p><b>The Maryland Department of Planning developed the first State development plan, known as PlanMaryland, to improve coordination between State agencies and local governments and to better accommodate projected population growth. Concerns have been expressed over the impact of the plan on local planning and zoning authority.</b></p>
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### **Background**

Managing growth is one of the most significant challenges currently facing the State. Maryland is the fifth most densely populated state, and its population of more than 5.7 million people is expected to grow by at least 15% over the next 25 years. The impact of this anticipated growth will depend on decisions made by the public and private sectors. Planning, growth management, and development decisions are made by numerous entities in Maryland's public sector, as there are 23 counties, Baltimore City, and 120 municipalities with planning and zoning authority. In addition, there are many State agencies whose policies and programs assist local governments, impact development, and expend significant capital development funding. Limited coordination and differing growth and environmental policies among these State and local government entities is fueling growth management policy tension.

In 2009, several bills passed by the General Assembly effectively updated the State's smart growth and planning policy foundation. These bills established 12 new planning visions for the State to encourage more sound growth and development policy; required local planning commissions or boards to submit annual reports on a uniform set of smart growth measures and indicators; and established a statewide land use goal with the specific intention of increasing the current percentage of growth within designated growth areas and decreasing the percentage of growth outside growth areas. The bills also clarified the definition of consistency between local comprehensive plans and local land use ordinances and reinforced that local jurisdictions must implement and follow their comprehensive plans. While these laws updated and clarified existing policies, the State still lacks an overall plan for agency coordination and local collaboration to achieve revitalization, redevelopment, preservation, and sustainability.

### **PlanMaryland**

In accordance with a provision of Title 5 of the State Finance and Procurement Article, the Maryland Department of Planning (MDP) must "...prepare and from time to time revise a plan or plans for development of the State." Over the past three years, MDP has worked with State agencies, local governments, private industry, and the general public to develop the State's first comprehensive development plan, known as PlanMaryland. PlanMaryland is a policy framework for growth and preservation in the State and a blueprint to help guide State agencies in their decision making on programs and funding for growth and preservation. MDP released a

draft of PlanMaryland on April 2011 and subsequently sought public input through open houses, targeted meetings, and an online comment tool. MDP released a revised draft in September 2011 that reflected public feedback and established an additional public comment period. MDP plans to submit the final PlanMaryland document to Governor Martin J. O'Malley by December 2011.

PlanMaryland identifies three primary State planning objectives.

- **Growth** – Concentrate development and redevelopment in communities where there is existing and planned infrastructure.
- **Preservation** – Preserve and protect environmentally sensitive and rural lands and resources from the impacts of development.
- **Sustainability** – Ensure that a desirable quality of life in communities is sustainable.

PlanMaryland proposes to achieve these goals by focusing State programmatic and financial assistance in specific geographic areas and streamlining State regulations and procedures. The plan calls for targeting State assistance to specific planning areas that have been identified for growth, revitalization, land preservation and resource conservation, and maintenance of public services and quality of life. These planning areas include those areas already established by local jurisdictions and targeted for State assistance, such as enterprise zones and priority preservation areas. The plan anticipates an ongoing local/State effort that will identify additional areas that reflect local feedback and data from existing State mapping tools such as GreenPrint and AgPrint. The plan proposes that State capital spending and noncapital plans, programs, and procedures be realigned and focused to achieve local and State goals and objectives. The plan also proposes that MDP collaborate with other State agencies to incorporate PlanMaryland into other strategic State plans for major needs, such as transportation, and streamline current programs.

The Smart Growth Subcabinet, with advice from the Maryland Sustainable Growth Commission, will provide oversight on the implementation of PlanMaryland. This will include implementation of a consistency process to investigate State policies and procedures that appear contrary to the plan's goals and objectives.

## Policy Implications

While the September 2011 draft of PlanMaryland does not propose to change existing laws or regulations, it does establish a management framework that may prompt future policy and program changes. There is concern among several local jurisdictions that PlanMaryland could lead to efforts to weaken local government planning and zoning authority and reduce State aid to some local jurisdictions. At the same time some environmental advocates have voiced concern that the plan will not have sufficient effect on growth patterns.

# Environment and Natural Resources

## Energy and the Environment

**Renewable energy, energy efficiency, and the impact of energy generation on the environment continue to garner significant interest and may result in legislative proposals to further Maryland's goals in this area.**

### Introduction

This paper provides a brief update on the State's efforts to reach the renewable energy and energy efficiency goals under the Renewable Energy Portfolio Standard (RPS) and the EmPower Maryland Program. The Maryland Energy Administration's (MEA) clean energy grant and loan programs, which have experienced a reduction in funding, are also discussed, along with one of the funding sources for the programs, the Regional Greenhouse Gas Initiative (RGGI). Finally, the Marcellus Shale Safe Drilling Initiative, established by executive order in June 2011, is discussed, along with overall legislative implications.

### Renewable Energy Portfolio Standard

Maryland's RPS requires that renewable sources generate specified percentages of Maryland's electricity supply each year, increasing to 20%, including 2% from solar power, by 2022. Electricity suppliers must submit renewable energy credits (REC) equal to the percentage mandated by statute each year, or pay an alternative compliance penalty (ACP) equivalent to the supplier's shortfall. Any ACP payments made are used by MEA to support new renewable energy sources. While RECs can be obtained by electricity suppliers from outside of the State, solar RECs (SREC) used to meet the solar RPS requirement will need to originate from within the State beginning in 2012.

The Department of Natural Resources' Power Plant Research Program (PPRP) indicates that in order to meet the increasing solar RPS requirements with SRECs, Maryland's solar capacity will need to grow by approximately 54% each year. According to the PPRP, such growth may be achievable in the near term, but in the later part of this decade, as the solar RPS requirement continues to increase, the ACP payments set out in statute decrease, calling into question whether interest in developing necessary utility-scale projects will continue. The availability of Maryland-generated SRECs may also be limited by the fact that Maryland SRECs are eligible to meet the solar and/or general RPS requirements in some other states as well, potentially causing them to be directed outside the State. To meet the non-solar RPS requirements with RECs, other renewable resources within the region will need to grow by 13% or more each year, which the PPRP judges to be achievable given current trends for the development and construction of renewable sources.



## **EmPower Maryland**

Under the EmPower Maryland law, the State has established the twin goals of reducing per-capita electricity consumption and peak demand 15% by 2015. Each utility is required to implement, under the Public Service Commission (PSC) supervision, initiatives to achieve a 10% reduction in per-capita electricity consumption (with the remaining 5% reduction coming from non-utility efforts/programs, including MEA programs) and a 15% reduction in per capita peak demand. Certain interim goals are also established for the utilities in 2011 and 2013.

PSC staff reports that, as of the second quarter of 2011, the utilities had achieved 28 and 87% of the 2011 interim goals for electricity consumption reduction and peak demand reduction, respectively, and 16 and 37%, respectively, of the final 2015 electricity consumption and peak demand reduction goals. The utilities are required to submit plans every three years detailing their proposals for achieving the goals for the subsequent three calendar years. The utilities submitted their 2012 to 2014 plans in September 2011, and PSC staff forecasts that under these plans, the utilities may achieve 73 and 139%, respectively, of the 2015 goals.

In response to the progress of the program so far, various recommendations for improvements have been made. Some of the recommendations relate to the structure of the program (such as how the cost-effectiveness of the energy efficiency proposals is judged or whether PSC should adopt a policy of incentives and penalties for the utilities), while others relate to the types of programs implemented and the amount of money invested in them.

## **MEA Grant Programs**

MEA administers various clean energy grant and loan programs to encourage energy efficiency and renewable energy generation. The agency, however, has experienced a significant decrease in funding in fiscal 2012, largely due to the phase out of funding from the American Recovery and Reinvestment Act of 2009. The agency's other source of funding, revenues from the auction of carbon dioxide emissions allowances under RGGI, has also been declining overall. However, the impact of declining RGGI revenues on MEA's fiscal 2012 budget for its clean energy programs has been mitigated by a temporary (for fiscal 2012 to 2014) reallocation of the overall revenues from the RGGI auctions in the Budget Reconciliation and Financing Act of 2011. The reallocation allows a higher share of the revenue to go toward energy efficiency, renewable energy, climate change, administration, and related programs, temporarily suspending allocation of revenue toward residential electricity rate relief. Despite reduced funding, MEA's announcement of its fiscal 2012 clean energy programs includes a range of programs in which it plans to collectively invest about \$14 million.

## **Regional Greenhouse Gas Initiative**

RGGI is a regional cap-and-trade program designed to reduce carbon dioxide emissions from power plants 10% by 2018. The initiative generates a significant amount of revenue for participating states through the sale of emissions allowances in quarterly auctions primarily to entities that need allowances for compliance. Since the auctions began in fall 2008, Maryland has generated \$169.6 million, the majority of which has been allocated to low-income energy bill assistance and residential electricity rate relief, but a portion has also gone toward MEA's clean energy programs. As mentioned earlier, revenues from the auctions have generally been declining, as allowances have been selling for the minimum allowable price in recent auctions and not all allowances offered at the auctions have been sold. New Jersey is withdrawing from RGGI at the end of 2011 based on doubts about its effectiveness, leaving nine participating states. A scheduled, comprehensive review that could lead to changes to the program is currently being undertaken, to be completed in 2012.

## **Marcellus Shale Safe Drilling Initiative**

In June 2011, Governor Martin J. O'Malley signed an executive order establishing the Marcellus Shale Safe Drilling Initiative to assist State policymakers and regulators in determining whether and how gas production from the Marcellus shale in Maryland can be accomplished without unacceptable risks of adverse impacts to public health, safety, and the environment. Legislation that would have required a similar effort (House Bill 852) failed during the 2011 session. The initiative is being implemented by the Maryland Department of the Environment (MDE) and the Department of Natural Resources in consultation with an advisory commission established under the order. An initial task, investigating the desirability of legislation to establish revenue sources to fund State activities related to hydraulic fracturing and standards of liability for damages caused by gas exploration and production must be completed by December 31, 2011. A broader study is also required, with reports due in August 2012 and 2014. MDE has stated that the initiative is not a moratorium on drilling in the Marcellus shale and that, if information becomes available in the course of the study that demonstrates that natural gas can be extracted from shale formations in Maryland without specified adverse impacts, the department could issue permits, under its current authority, with appropriate safeguards.

## **Implications for the 2012 Session**

Efforts to further the State's goals regarding renewable energy and energy efficiency are again expected to be the subject of legislation in 2012. Modification of the RPS to create an offshore wind "carve-out," similar to the solar RPS requirement, has been discussed as a potential proposal to encourage offshore wind development (*see* the Business Regulation section of this issue papers publication for discussion of offshore wind development). Legislation introduced in the 2011 session may be reintroduced, addressing long-term contracts for SRECs

and sustainable energy utilities. The EmPower Maryland program and RGGI, both undergoing periods of evaluation and potential adjustment, may garner the interest of legislators. Also, the findings and recommendations resulting from the initial work under the Marcellus Shale Safe Drilling Initiative could lead to the introduction of legislation establishing a State-level severance tax or other revenue source on the production of natural gas and/or standards of liability for damages caused by natural gas exploration and production.

# Environment and Natural Resources

## Reduction of Lead Risk in Housing Law

**A recent unanimous decision of the Maryland Court of Appeals eliminated a significant tort liability protection afforded to landlords under the Reduction of Lead Risk in Housing Law. Although the impact of this ruling is not fully known at this time, the decision of the court is likely to spur activity during the 2012 session.**

### Background

In 1992, the Maryland General Assembly established the Lead Paint Poisoning Commission (Chapter 406 of 1992) to recommend ways to prevent lead poisoning, preserve safe and affordable housing, and to compensate and rehabilitate persons injured by elevated blood lead levels. The commission was also charged, in part, with making recommendations on how to protect landlords from excessive damage claims from lead poisoning. In 1994, in response to the recommendations of the commission, the Reduction of Lead Risk in Housing Law (Chapter 114 of 1994) was enacted. Chapter 114 establishes a comprehensive plan to regulate compensation for children who are poisoned by lead paint, treat affected residential rental properties to reduce risks, and limit liability of landlords who act to reduce lead hazards in accordance with various regulatory requirements. The Act was the result of a compromise supported by child advocates, government officials, and landlords.

Chapter 114 applies to “affected property” which means property constructed before 1950 that contains at least one rental dwelling unit or any other residential rental property constructed between 1950 and 1978 for which the landlord elects to comply with the regulatory provisions of Chapter 114.

If a landlord complies with the regulatory provisions, Chapter 114 provides liability protection, through a qualified offer, by limiting compensation to children who resided in the rental unit to not more than \$7,500 for all medically necessary treatments and to not more than \$9,500 for relocation benefits. Compliance with Chapter 114 includes having registered with the Maryland Department of the Environment (MDE), having implemented all lead risk reduction treatment standards, and having provided notice to tenants about their legal rights and specified lead poisoning prevention information. The liability protection under Chapter 114, however, has been rendered invalid by a recent Maryland Court of Appeals decision.

## Recent Maryland Court of Appeals Ruling

### The Decision

In a decision filed October 24, 2011 (*Jackson, et al., v. Dackman Co. et al.*, No. 131, September Term 2008), the Court of Appeals ruled that the limits on landlord liability in Chapter 114 are unconstitutional because the provisions violate Article 19 of the Maryland Declaration of Rights. Article 19 protects a right to a remedy for an injury and a right of access to the courts. The court further ruled that the unconstitutional provisions are severable from the remaining provisions of Chapter 114, and a landlord of an affected property is required to continue to comply with the remaining provisions.

### Court's Analysis

The court indicated that some restrictions on judicial remedies survive constitutional scrutiny under Article 19, while others do not. The court has upheld (1) some conditions precedent to filing suit; (2) reasonable limits on the recovery of damages; and (3) reasonable statutes of repose. Additionally, the court has upheld substitution of a statutory remedy for a common law remedy. The court stated the test to be applied under an Article 19 challenge is whether the restriction on a judicial remedy was reasonable.

In this case, the court decided whether the statutory remedy (qualified offer) was a reasonable substitution for the remedy available at common law (personal injury action). As noted above, under a qualified offer, the maximum amount payable is \$17,000. The court found such an amount “miniscule” and thus, not reasonable compensation for a child permanently damaged by lead poisoning. Therefore, the court held the limited liability provisions under Chapter 114 to be invalid under Article 19 because a qualified offer does not provide a reasonable remedy.

### Impacts of the Decision

Owners of pre-1950 rental units that are in compliance with Chapter 114 and owners of 1950-1978 rental units that voluntarily opted to comply will be impacted by the court's decision, as they will no longer have the liability protection previously afforded to them. However, it is not yet clear how landlords, along with tenants, will be impacted by this decision. Possible impacts include increased exposure to lawsuits brought under common law negligence or consumer protection provisions of the statute; a reduced rate of compliance with Chapter 114 (especially from landlords who chose to opt in voluntarily); or the discontinuation of rental service.

As of October 2011, there were a total of 127,265 registered rental property units (both pre-1950 and 1950-1978 voluntary opt-in units) statewide, owned by 33,383 owners (both

individuals and corporations). The majority of registered rental property units (66,466) were located in Baltimore City.

## **Implications for 2012**

Two groups – the Lead Poisoning Prevention Commission and the Lead Poisoning Prevention Study Group – are currently examining various aspects of Chapter 114 and the impacts of the court's decision on the implementation of that Act. The Lead Poisoning Prevention Commission, which was established by Chapter 114, is required to study and collect information on the effectiveness of the Act as it relates to lessening risks to responsible owners and on the availability of affordable housing. And, as a result of Chapter 610 of 2011, MDE created the Lead Poisoning Prevention Study Group in July 2011 to evaluate processes that reduce the incidence of lead poisoning in affected and nonaffected properties, including rental properties built from 1950 through 1978 and owner-occupied properties. Chapter 610 required MDE to conduct the study in consultation with members of the General Assembly and representatives of specified State and local agencies and organizations reflecting the interests of landlords, housing owners, and lead poisoning prevention advocates. MDE is required to report the results of the study to the General Assembly by December 31, 2011.

At consecutive meetings held by the two groups on November 3, 2011, it was made clear that the impacts of the court decision need to be addressed. Plans are underway, by the Lead Poisoning Prevention Study Group in particular, to formulate remedies for possible inclusion in Administration legislation to be introduced during the 2012 session. In addition, at the Lead Poisoning Prevention Study Group meeting, it was mentioned that the annual lead rental property registration/renewal is due by December 31, 2011; the data resulting from that process will provide an early indication of how compliance may be altered by the court's decision.



# State Government

## Validation of Petition Signatures

**The process for the validation of petition signatures continues to evolve as guidance from State election officials, rulings by the Court of Appeals, and the novel use of Internet technology to help gather petition signatures converge to raise a series of thorny issues.**

### Introduction

The process of validating signatures on petitions has been controversial in recent years. Court decisions interpreting the requirements of State law have altered previously accepted standards for determining what constitutes a valid signature. The most recent controversy concerns an apparently successful petition drive to bring to referendum a law granting in-state tuition benefits at State colleges and universities to certain undocumented immigrants. The campaign against the law utilized Internet technology to gather signatures that proponents say reduces the risk that signatures on petitions will be invalidated due to minor technical deficiencies but opponents say is susceptible to fraud. This online petition tool is being challenged in court as illegal under State law.

### Referenda in Other States

The referendum (also called a popular referendum, as opposed to a legislative referendum where a legislature refers a law to the voters for approval) is a relatively rarely used tool nationally, in comparison to citizen initiatives, in which a law originates from a citizen petition. In the 2010 elections, for example, according to information reported by the National Conference of State Legislatures (NCSL), there was one statewide popular referendum, while there were 42 citizen initiatives voted on across the nation. Among the states that are holding 2011 elections, there are 2 popular referenda and 10 citizen initiatives.

According to NCSL, the popular referendum is available to voters in 23 states. Maryland is one of the few eastern States that allow for referenda and/or initiatives, with most such states concentrated in the western and central United States. Maryland is also somewhat unique in only allowing for referenda and not initiatives. The vast majority of states have either both the popular referendum and some form of an initiative available to voters or neither option. Maryland's signature requirement of 3% of the number of voters that voted for Governor in the most recent election is also relatively low in comparison to other states' referendum signature requirements. Many are between 5% and 10% of, in most cases, the number of voters who voted for Governor, or who simply voted, in the last election.



## Uses of Petitions under State Law

Various uses of petitions under State law are shown below in **Exhibit 1**, along with the signature requirement and the constitutional or statutory authority for each use.

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### Exhibit 1 Uses of Petitions under State Law

<b><u>Purpose</u></b>	<b><u>Required Signatures</u></b>	<b><u>Authority</u></b>
State law referendum	3% of qualified voters of the State (except for a public local law for any one county or Baltimore City, which requires 10% of the qualified voters of the jurisdiction)*	Maryland Constitution, Article XVI
Formation of new political party	10,000 registered voters	Maryland Code, Election Law Article, § 4-102
Nomination of unaffiliated candidate for general election	1% of registered voters eligible to vote for the office sought, but not less than 250 signatures	Maryland Code, Election Law Article, § 5-703
Placement of presidential candidate on primary election ballot**	400 registered voters from each congressional district in the State	Maryland Code, Election Law Article, § 8-502
Local Referendum (Charter County)	Set in charter	Maryland Code, Article 25A, § 8
Local Referendum (Code County)	10% of registered voters of the county	Maryland Constitution, Article XI-F, § 7; Maryland Code, Article 25B, § 10
Creation of a charter board	20% of registered voters of the county under § 1 or 5% under § 1A, but in both cases not more than 10,000 signatures is required	Maryland Constitution, Article XI-A, §§ 1 and 1A
Nomination of charter board members	5% of registered voters of the county under § 1 or 3% under § 1A, but in both cases not more than 2,000 signatures is required	Maryland Constitution, Article XI-A, §§ 1 and 1A
Charter Amendment	20% of registered voters of the county, but not more than 10,000 signatures is required	Maryland Constitution, Article XI-A, § 5

Note: Additional uses of petitions, such as for incorporation of a municipality or amendment of a municipal charter, are not included.

\*“Qualified voters” means the number of votes cast for Governor at the last preceding gubernatorial election. In 2011, the 3% requirement equals 55,736 signatures.

\*\*For Democratic or Republican presidential primary candidates who are not recognized and certified by the Secretary of State to be on the ballot.

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## Requirements for a Valid Petition

To be valid, a petition must include (1) an information page; and (2) signature pages containing the number of signatures required by law. The information page must include certain information concerning the purpose, contents, and sponsor of the petition. The signature pages of a petition must include:

- a description of the subject and purpose of the petition;
- if the petition seeks to place a question on the ballot, either the full text of the proposal or a fair and accurate summary of the proposal;
- a statement that each signer supports the purpose of the petition and is a registered voter eligible to sign the petition;
- signatures and certain identifying information supplied by each signer; and
- identification of the petition circulator and an affidavit signed by the circulator attesting that the circulator personally observed each signature on that page as it was affixed and that the signatures are valid.

Each individual who signs a petition must sign his or her name (1) exactly as it appears in the statewide voter registration list; or (2) using the individual's surname of registration and at least one full given name and the initials of any other names. Each signer must also print his or her name as it was signed and provide the date of signing and his or her address. Signers are also asked to provide their date of birth, but failure to provide this information does not invalidate the signature.

## Recent Court Decisions

Two Court of Appeals decisions in the last few years have dramatically changed the criteria for determining what constitutes a valid signature on a petition. In *Doe v. Montgomery County Board of Elections*, 406 Md. 697 (2008), the court held that to be valid, a signature on a petition must strictly comply with § 6-203(a)(1) of the Election Law Article of the Annotated Code of Maryland, which requires a voter to sign his or her name on a petition “as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names.” Prior to *Doe*, election officials had applied a more lenient standard under which signatures were counted even if they did not comply with § 6-203(a)(1), if it could be determined that the individual signing a petition was in fact a registered voter based on all the information provided by the individual, including the signature, printed name, address, and date of birth. The effect of *Doe* was to require the invalidation of many voter signatures that were previously considered valid, such as those containing nicknames and those omitting middle names.

The court clarified its holding in *Doe* in its subsequent decision in *Montgomery County Volunteer Fire-Rescue Association v. Montgomery County Board of Elections*, 418 Md. 463 (2011). In that case, the court held that a signature may not be invalidated solely because it is

wholly or partly illegible. Instead, election officials must refer to any legible parts of the signature and the printed name together to determine if the signer provided all of the name information required by § 6-203(a)(1). Since many people have indecipherable signatures, this clarification ensured the validation of a substantial number of additional names.

## **Online Petition**

In the 2011 regular session, the General Assembly passed Senate Bill 167, commonly known as the DREAM Act, which allowed certain undocumented immigrants to pay in-state tuition rates first at community colleges and then, after graduation from a community college, on enrollment at other public State institutions of higher education. Opponents of the law gathered petition signatures to refer it to referendum at the 2012 general election. The sponsor of this petition drive is known as MDPetitions.com.

As part of this effort, MDPetitions.com created a website where an individual could enter the individual's name, email address, phone number, date of birth, and zip code; the website would generate a complete petition form in the proper format with the individual's full name as listed in the voter registration list, address, and date of birth already filled in. The website also pre-printed the individual's name and other required information in the space provided for the petition circulator. All that was required of the website user to complete the petition was to sign and date the form both as a petition signer and as the petition circulator and mail it in. The website would also fill in the names and other required information for other registered voters in the website user's household if the user indicated that they too would sign the petition.

In July 2011 the State Board of Elections certified that MDPetitions.com had submitted a sufficient number of valid signatures to force a referendum on Senate Bill 167. Shortly thereafter, the immigrant advocacy group Casa de Maryland and several individuals filed suit seeking to block the referendum. Among other things, the plaintiffs argued that signatures submitted through the MDPetitions.com website were invalid because State law requires that a petition signer provide the signer's name, address, and date of birth, but the MDPetitions.com website actually provides that information. The website poses a serious danger of fraud, the plaintiffs alleged, because any individual who has basic information about a Maryland voter could create a pre-printed petition for that voter and sign and submit it with little effort and little risk of detection. The State denied the allegations, and a hearing in the case is scheduled for January 27, 2012.

A website similar to MDPetitions.com that pre-prints petition forms with a voter's information already filled in has apparently not been utilized in any other State to date, according to the National Conferences of State Legislatures. The Wisconsin state elections agency recently rejected a policy that would have allowed groups circulating petitions to email a petition form to a voter with the voter's name and address already filled in. Elections officials in California and Utah recently disapproved the use of websites that allow voters to sign a petition electronically, instead of printing out and signing the petition by hand.

# State Government

## Commission to Study the Impact of Immigrants in Maryland

**The Commission to Study the Impact of Immigrants in Maryland was extended during the 2011 legislative session. The commission intends to release a final report of its findings and recommendations by January 2012.**

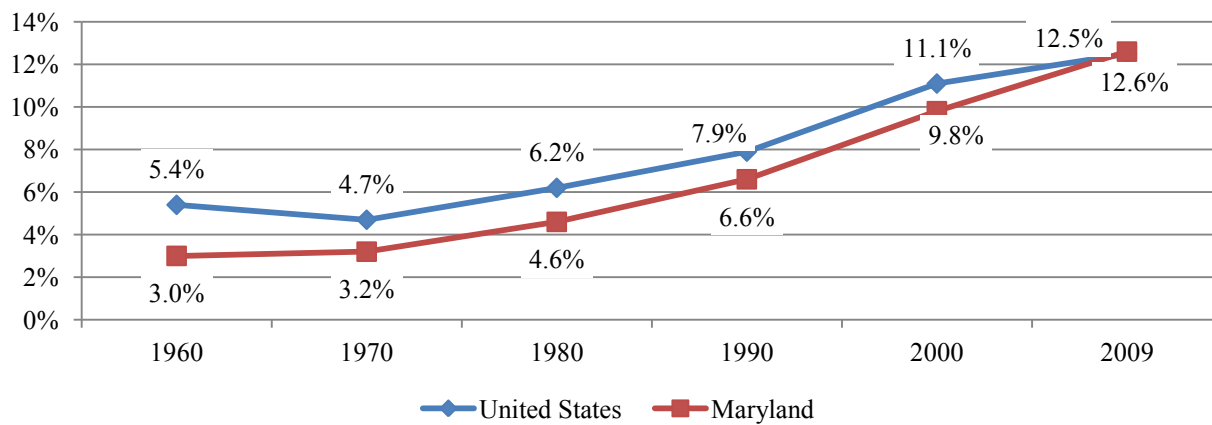
Immigration policy is increasingly becoming a topic of interest for many people in Maryland and throughout the nation. With comprehensive immigration reform stalled at the federal level, State and local officials are being asked to address various issues relating to immigration and, in particular, the perceived effects of unauthorized immigration. To gain a broader understanding of the economic and fiscal issues surrounding immigration, the General Assembly passed legislation in 2008 establishing the Commission to Study the Impact of Immigrants in Maryland. The commission began its deliberations in 2010 by examining the demographic and socioeconomic profile of the State's immigrant community. The commission was also presented with information concerning the economics of immigration, federal and State immigration enforcement programs, local law enforcement policies, and compliance efforts with the federal REAL ID requirement. In January 2011, the commission issued an interim report.

During the 2011 legislative session, the commission held fact finding meetings in Annapolis that focused on a broad range of topics, including labor and industry issues, the fiscal impact of immigration, the educational and social needs of immigrant students and families, and the fiscal and programmatic effects of immigration on local school systems. During the 2011 interim, the commission heard testimony from several community organizations that highlighted the unique challenges confronting new immigrants to Maryland and potential solutions that may aid in the social integration of immigrants within the broader society. The commission also received an update on legislation that was introduced and passed at the prior legislative session affecting immigration to Maryland. The commission is in the process of reviewing the information obtained during its fact finding meetings and intends to release a final report of its findings and recommendations by January 2012.

### Extent of Immigration to Maryland

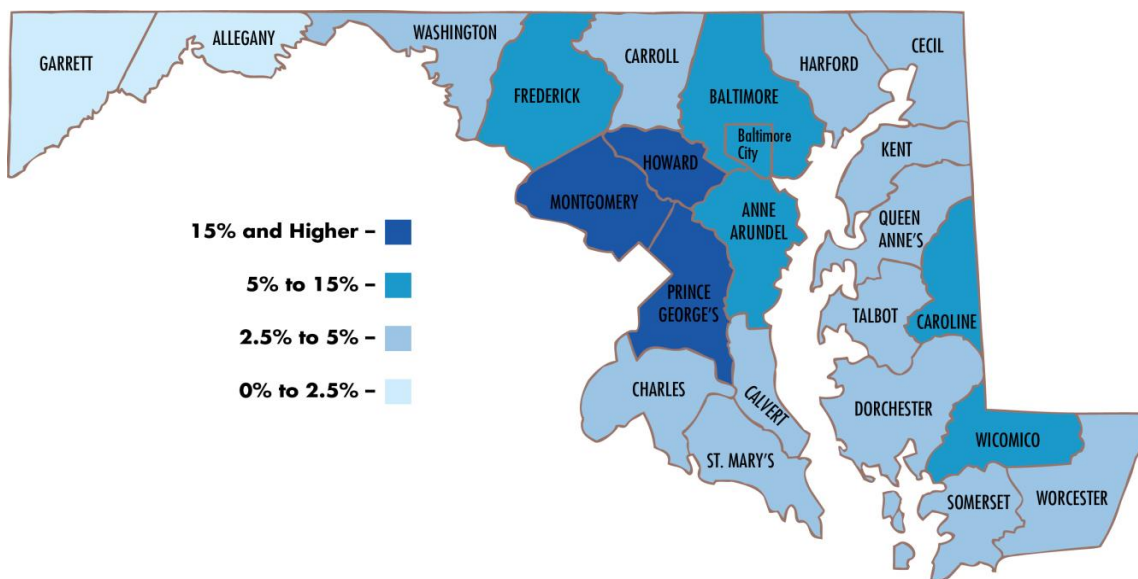
Maryland is a leading state for immigrants, due to proximity to the nation's capital and the relatively strong business climate in past years. International immigration added nearly 200,000 people to the State's population between 2000 and 2009, according to the U.S. Census Bureau. This was the thirteenth largest gain from immigration among all states during that period. From 2000 to 2009, Maryland accounted for 2.1% of the total national population gain from international immigration. In the most recent year, the State gained 19,600 people through international immigration or 2.3% of the national total. **Exhibit 1** shows the immigrant population as a percentage of the total national and State populations. **Exhibit 2** shows the percentage of the immigrant population for each county in the State.

### Exhibit 1 Foreign-born as Percent of Total Population



Source: U.S. Census Bureau, American Community Survey

### Exhibit 2 Foreign-born Population in Maryland 2005-2009 Average



Source: U.S. Census Bureau, American Community Survey

## Summary of Interim Findings

The commission recognized in its interim status report that the factors affecting immigration and its impact on Maryland are complex and warrant thorough investigation. While

the commission continued to conduct fact-finding meetings during the 2011 session and interim, the commission was able to identify several issues and findings in its interim report relating to the economic and fiscal impacts of immigration and the need to invest in the educational needs of immigrant children. The following summarizes key findings from the commission's interim status report.

- Immigration provides a small, though lasting, net economic benefit to native workers. The magnitude and distribution of these benefits depend on whether immigrant labor is a substitute for or a complement to native labor. In Maryland, immigrants tend to be a particularly complementary to the native work force, at least relative to the situation in other states, perhaps providing a better than average contribution to the state's economic vitality. In particular, Maryland attracts a high proportion of the highest skilled immigrants. However, there might be measurable negative economic impacts of immigration on certain persons or groups, especially those that compete with immigrant labor in certain occupations and industries.
- Considerable research has been conducted over the past two decades examining the fiscal impact that immigration has on various units of government. The Congressional Budget Office released a report in 2007 concluding that, in aggregate and over the long term, immigrants pay more in taxes (federal, state, and local) than they use in government services. However, the impact of unauthorized immigrants on the federal government differs from the effect on state and local governments. While most unauthorized immigrants are ineligible for many federal programs (*i.e.*, public cash assistance, food stamps, Medicaid (other than emergency services), and Social Security), state and local governments are limited in their ability to deny services to immigrants, including those who are unauthorized. State and local governments must provide certain services (*i.e.*, public K-12 education, emergency health care, and law enforcement) to individuals regardless of their immigration status. Consequently, while the federal government receives a net benefit from unauthorized immigrants, state and local governments realize a net loss with unauthorized immigrants paying less in state and local taxes than the cost to provide services to that population. This is due partly to the fact that unauthorized immigrants typically earn less than native-born residents and thus pay a smaller portion of their income in taxes.
- From a fiscal point of view, the education of immigrant children may require an extra investment for language training, smaller class sizes, after school programs, and subsidized meals. However, this extra investment is extremely valuable because the generation of children of recent immigrants will shortly be an integral part of our communities and workforce. Research indicates that education is a key factor in achieving better socioeconomic status and improved health. Education is especially helpful for immigrants and their children, particularly since an effective public education system will enhance the integration of immigrant children within the broader society.



# State Government

## Base Realignment and Closure

**With plans for the 2005 Base Realignment and Closure scheduled to be completed by September 2011, preparations are winding down. The Maryland Military Installation Council and the Joint Committee on Base Realignment and Closure are responsible for coordinating and overseeing State and local efforts. Since neither has a termination provision in statute, they may consider future efforts to ensure the accommodation of the associated workforce growth and economic development.**

### 2005 BRAC Impact on Maryland

In 1990, the U.S. Congress created the Base Realignment and Closure (BRAC) process, a procedural mechanism for streamlining the nation's defense infrastructure. The 2005 BRAC plans, which went into effect in November 2005, required the Department of Defense (DOD) to complete the planned base closures and realignments by September 15, 2011.

Significant federal and private-sector job growth in the State has resulted from the 2005 BRAC plans. As is detailed in **Exhibit 1**, an estimated 21,500 new direct federal jobs have been created at Fort Meade, National Naval Medical Center, Andrews Air Force Base, Aberdeen Proving Ground, and Fort Detrick. To accommodate the new BRAC jobs, major facilities have been constructed. For a listing of major BRAC construction projects at military installations in the State, including the number of personnel at each facility, see **Exhibit 2**.

In addition to direct job growth, thousands of indirect jobs are expected to be created for an estimated total of up to 60,000 new federal and private-sector jobs statewide through 2020. It is further estimated that Maryland will gain approximately 28,000 households as a result of the BRAC process and other military growth.

### Coordination and Oversight of Maryland's BRAC Initiatives

A number of State agencies and local governments have been actively preparing for BRAC growth. These efforts include, among other things, upgrades to the State's transportation, water, and wastewater infrastructure; expansion of education opportunities to better serve the BRAC mission; workforce creation; environmental stewardship; business outreach and community development; and housing programs. The Maryland Military Installation Council (MMIC), the BRAC Subcabinet, and the Joint Committee on Base Realignment and Closure are responsible for coordinating and overseeing these State and local efforts.



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**Exhibit 1**  
**Estimated BRAC Growth in Maryland**  
**Direct Federal Jobs**

<b><u>Base</u></b>	<b><u>Estimated Employment Change</u></b>
Aberdeen Proving Ground (Harford County)	Gain of 8,800 jobs
Andrews Air Force Base (Prince George's County)	Gain of 3,000 jobs
Fort Meade (Anne Arundel County)	Gain of 5,800 jobs
Fort Detrick (Frederick)	Gain of 1,400 jobs
National Naval Medical Center (Bethesda)	Gain of 2,500 jobs
<b>Total Job Growth</b>	<b>21,500</b>

BRAC: Base Realignment and Closure

Source: Base Realignment and Closure Subcabinet

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**Exhibit 2**  
**Major BRAC Construction Projects**

<b><u>Project</u></b>	<b><u>Estimated Personnel at Facility</u></b>
<b>Aberdeen Proving Ground (Harford County)</b>	
Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance (C4ISR) Campus	
Phase I	5,000
Phase II	2,700
<b>Andrews Air Force Base (Prince George's County)</b>	
Air National Guard Readiness Center	605
Air Force District of Washington Headquarters	2,395
<b>Fort Meade (Anne Arundel County)</b>	
Defense Information Systems Agency Headquarters	4,300
Adjudication Activities Facility	800
Defense Media Activity Headquarters	650
<b>National Naval Medical Center (Bethesda)</b>	
Walter Reed National Military Medical Center	2,400

BRAC: Base Realignment and Closure

Source: Department of Business and Economic Development; BRAC Subcabinet

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## **The Maryland Military Installation Council**

The General Assembly established the Maryland Military Installation Council in 2003 to serve as an advocate for military facilities located in Maryland and to coordinate State agency planning in response to changes caused by BRAC (Chapter 335 of 2003). Originally named the Maryland Military Installation Strategic Planning Council, the General Assembly renamed the council and expanded the membership from 19 to 22 members in 2006 (Chapter 634 of 2006). Membership of the council was further increased to 24 in 2010 (Chapter 15 of 2010). MMIC members represent various State agencies, military installations, and local liaison organizations. The council is staffed by the Department of Business and Economic Development (DBED), and its annual report is due by December 31 of each year.

MMIC met twice during calendar 2011. The first meeting featured keynote speaker Anthony Principi, former U.S. Veterans Affairs Secretary and Chairman of the 2005 BRAC Commission, who spoke about BRAC's past and future rounds and impacts on Maryland military installations. The second meeting highlighted final 2005 BRAC reports from commanders of each of the five BRAC-impacted installations in the State.

## **BRAC Subcabinet**

The BRAC Subcabinet, created by Chapter 6 of 2007, is chaired by the Lieutenant Governor and includes eight State secretaries of cabinet departments and the State Superintendent of Schools. The subcabinet is charged with a number of tasks, including:

- coordinating and overseeing the implementation of all State action to support the mission of military installations affected by BRAC;
- coordinating and overseeing the development of BRAC-related initiatives in various areas, including workforce readiness, education, business development, health care facilities and services, community infrastructure and growth, environmental stewardship, workforce housing, and transportation;
- working with local jurisdictions affected by BRAC to facilitate planning, coordination, and cooperation with the State; and
- collaborating with and reviewing the recommendations of MMIC.

Working in collaboration with local jurisdictions, the subcabinet completed a State action plan in 2007 to identify and guide critical tasks, programs, projects, and initiatives that address the needs created by the arrival of residents and businesses. The subcabinet issued 2008, 2009, and 2010 progress reports and implemented a BRACStat program to track the progress of various initiatives outlined in the BRAC action plan. The subcabinet sunsets December 31, 2011. To date, the subcabinet has not met during the 2011 interim, and it is unlikely that it will meet again. Any remaining BRAC Subcabinet functions will move to the Smart Growth Subcabinet and the Maryland Department of Planning after the December 31 termination date.

## **Joint Legislative Committee on BRAC**

Chapter 469 of 2007 established the Joint Committee on Base Realignment and Closure, which consists of eight members of the House of Delegates and eight members of the Senate. The committee is required to provide continuing legislative oversight of the State's response to BRAC-related opportunities and changes. In cooperation with local and State units, it must also oversee and participate in developing systems and processes that fast track the approval of BRAC-related:

- transportation infrastructure;
- water and sewer infrastructure;
- State and local planning processes;
- affordable housing options;
- education facilities, including public school and community college construction; and
- health care facilities and infrastructure.

The committee met once during the 2011 interim, at which time the Executive Director of the BRAC Subcabinet and a representative of the Maryland Department of Transportation briefed the committee on the status of the BRAC process and the State's readiness to accommodate the associated workforce growth and economic development, particularly in relation to transportation systems. The committee, unlike the subcabinet, does not have a termination date. The committee discussed the possibility of termination but did not come to any conclusions on its future.

# Local Government

## State Aid to Local Governments

**State aid to local governments is projected to total \$6.8 billion in fiscal 2013, a \$213.9 million or 3.3% increase over the prior year.**

Local governments are projected to receive \$6.8 billion in State aid in fiscal 2013, a 3.3% increase from the prior year resulting in an additional \$213.9 million in State support for local programs and services. As in prior years, most of the State aid is targeted to public schools, while funding for counties and municipalities will account for 6.6% of total aid. Local school systems will receive \$5.9 billion in State support, or 87.7% of total aid. County and municipal governments will receive \$446.0 million, community colleges will receive \$279.0 million, libraries will receive \$66.9 million, and local health departments will receive \$38.7 million. In terms of year-over-year funding enhancements, State aid for public schools will increase by \$148.5 million (2.6%); library aid will increase by \$1.5 million (2.3%); community college aid will increase by \$16.7 million (6.4%); and aid for local health departments will increase by \$1.4 million (3.7%). County and municipal governments will realize a \$45.9 million (11.5%) increase in State aid. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2013. **Exhibit 2** shows the change in State aid by major programs.

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### Exhibit 1 State Aid to Local Governments (\$ in Millions)

<u>Governmental Entity</u>	<u>FY 2012</u>	<u>FY 2013</u>	<u>\$ Difference</u>	<u>% Difference</u>
Public Schools	\$5,774.7	\$5,923.1	\$148.5	2.6%
County/Municipal	400.2	446.0	45.9	11.5%
Community Colleges	262.3	279.0	16.7	6.4%
Libraries	65.4	66.9	1.5	2.3%
Local Health Departments	37.3	38.7	1.4	3.7%
<b>Total</b>	<b>\$6,539.8</b>	<b>\$6,753.7</b>	<b>\$213.9</b>	<b>3.3%</b>

Source: Department of Legislative Services

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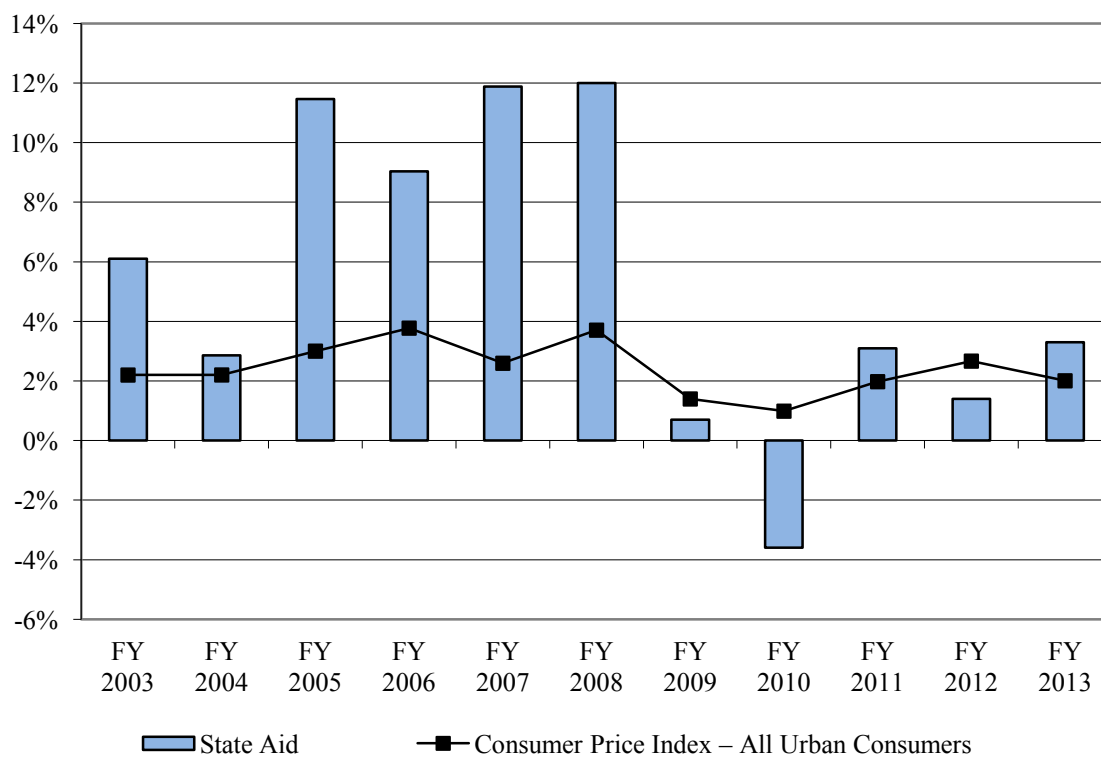
**Exhibit 2**  
**State Aid by Major Programs**  
**Fiscal 2011-2013**  
**(\$ in Millions)**

	<u>FY 2011</u>	<u>FY 2012</u>	<u>Baseline FY 2013</u>	<u>\$ Change 2012-2013</u>	<u>% Change 2012-2013</u>
<b>Public Schools</b>					
Foundation Program	\$2,763.5	\$2,773.1	\$2,809.3	\$36.3	1.3%
Supplemental Grant	46.5	47.9	46.5	-1.4	-3.0%
Geographic Cost Index	126.6	127.3	128.7	1.4	1.1%
Compensatory Aid	1,041.1	1,083.8	1,113.0	29.2	2.7%
Student Transportation	244.4	248.2	251.6	3.3	1.3%
Special Education – Formula Aid	264.0	264.3	268.0	3.7	1.4%
Special Education – Nonpublic Placements	112.8	112.8	116.0	3.2	2.9%
Limited English Proficiency Grants	151.2	162.7	178.3	15.6	9.6%
Guaranteed Tax Base	47.4	50.1	47.2	-2.8	-5.7%
Other Education Programs	70.2	71.5	72.1	0.6	0.9%
<b>Subtotal Direct Aid</b>	<b>\$4,867.6</b>	<b>\$4,941.7</b>	<b>\$5,030.8</b>	<b>\$89.1</b>	<b>1.8%</b>
Retirement Payments	849.8	833.0	892.3	59.4	7.1%
<b>Total Public School Aid</b>	<b>\$5,717.5</b>	<b>\$5,774.7</b>	<b>\$5,923.1</b>	<b>\$148.5</b>	<b>2.6%</b>
<b>Libraries</b>					
Library Aid Formula	\$33.0	\$33.0	\$33.2	\$0.3	0.8%
State Library Network	15.7	15.8	15.9	0.1	0.7%
<b>Subtotal Direct Aid</b>	<b>\$48.7</b>	<b>\$48.8</b>	<b>\$49.2</b>	<b>\$0.4</b>	<b>0.7%</b>
Retirement Payments	16.9	16.6	17.7	1.1	6.9%
<b>Total Library Aid</b>	<b>\$65.5</b>	<b>\$65.4</b>	<b>\$66.9</b>	<b>\$1.5</b>	<b>2.3%</b>
<b>Community Colleges</b>					
Community College Formula	\$194.4	\$194.4	\$210.7	\$16.3	8.4%
Other Programs	30.0	35.3	31.1	-4.2	-11.8%
<b>Subtotal Direct Aid</b>	<b>\$224.4</b>	<b>\$229.7</b>	<b>\$241.8</b>	<b>\$12.1</b>	<b>5.3%</b>
Retirement Payments	33.7	32.6	37.2	4.6	14.0%
<b>Total Community College Aid</b>	<b>\$258.1</b>	<b>\$262.3</b>	<b>\$279.0</b>	<b>\$16.7</b>	<b>6.4%</b>
<b>Local Health Grants</b>	<b>\$37.3</b>	<b>\$37.3</b>	<b>\$38.7</b>	<b>\$1.4</b>	<b>3.7%</b>
<b>County/Municipal Aid</b>					
Transportation	\$144.0	\$155.3	\$173.2	\$17.9	11.5%
Public Safety	83.4	88.2	108.8	20.7	23.4%
Program Open Space/Environment	15.6	9.1	16.6	7.5	81.9%
Disparity Grant	121.4	119.7	110.9	-8.8	-7.4%
Other Grants	9.7	27.8	36.5	8.6	31.1%
<b>Total County/Municipal Aid</b>	<b>\$374.1</b>	<b>\$400.2</b>	<b>\$446.0</b>	<b>\$45.9</b>	<b>11.5%</b>
<b>Total State Aid</b>	<b>\$6,452.5</b>	<b>\$6,539.8</b>	<b>\$6,753.7</b>	<b>\$213.9</b>	<b>3.3%</b>

Source: Department of Legislative Services

**Exhibit 3** shows the annual change in State aid to local governments, beginning with fiscal 2003. The projected growth of 3.3% is significantly below growth exhibited during the final years of the phase-in of the Bridge to Excellence in Public Schools Act of 2002. The relatively low anticipated growth following fiscal 2008 also reflects statutory limitations on growth in State aid resulting from decisions made during the 2007 special session and subsequent regular sessions.

**Exhibit 3**  
**Annual Change in State Aid to Local Governments**  
**Fiscal 2003-2013**



Note: State aid amounts include funding provided under the federal American Recovery and Reinvestment Act (ARRA).

Source: Department of Legislative Services



# Local Government

## Local Government Tax Actions

**Local governments were less able to limit tax increases for the current fiscal year, with eight counties raising property tax rates and three counties raising other local tax rates.**

## Local Government Tax Rates

Several local tax rates were adjusted in fiscal 2012, reflecting the continuing economic downturn. As shown in **Exhibit 1**, 10 counties changed their local property tax rates, with 8 counties increasing their rates and 2 counties decreasing them. Local income tax rates remained constant for tax year 2012, except for Queen Anne's County, which raised its rate to 3.2%, the highest amount authorized under State law, and Anne Arundel County, which lowered its rate to 2.49%. Talbot County increased its recordation tax rate to \$6.00 per \$500 of transaction. Hotel/motel tax rates remained the same for fiscal 2012, except for Howard County, which increased its tax rate to 7.0%. Local transfer and admissions and amusement tax rates remained the same for 2012. A comparison of local tax rates for fiscal 2011 and 2012 is provided in **Exhibit 2**.

**Exhibit 1**  
**Number of Counties Changing Local Tax Rates**  
**Fiscal 2010-2012**

	<u>Fiscal 2010</u>		<u>Fiscal 2011</u>		<u>Fiscal 2012</u>	
	▲	▼	▲	▼	▲	▼
Real Property	1	7	2	5	8	2
Local Income	0	0	1	0	1	1
Recordation	0	0	0	0	1	0
Transfer	0	0	0	0	0	0
Admissions/Amusement	0	0	0	0	0	0
Hotel/Motel	0	0	1	0	1	0

Note: ▲ represents a tax rate increase. ▼ represents a tax rate decrease.

Source: 2011 Local Government Budget and Tax Rate Survey; Department of Legislative Services/Maryland Association of Counties



**Exhibit 2**  
**Local Tax Rates – Fiscal 2011 and 2012**

County	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel/Motel	
	FY 2011	FY 2012	CY 2011	CY 2012	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012
Allegany	\$0.983	\$0.982	3.05%	3.05%	\$3.25	\$3.25	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.880	0.910	2.56%	2.49%	3.50	3.50	1.0%	1.0%	10.0%	10.0%	7.0%	7.0%
Baltimore City	2.268	2.268	3.20%	3.20%	5.00	5.00	1.5%	1.5%	10.0%	10.0%	9.5%	9.5%
Baltimore	1.100	1.100	2.83%	2.83%	2.50	2.50	1.5%	1.5%	10.0%	10.0%	8.0%	8.0%
Calvert	0.892	0.892	2.80%	2.80%	5.00	5.00	0.0%	0.0%	1.0%	1.0%	5.0%	5.0%
Caroline	0.870	0.870	2.63%	2.63%	5.00	5.00	0.5%	0.5%	0.0%	0.0%	5.0%	5.0%
Carroll	1.048	1.028	3.05%	3.05%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Cecil	0.915	0.940	2.80%	2.80%	4.10	4.10	0.0%	0.0%	6.0%	6.0%	3.0%	3.0%
Charles	1.026	1.067	2.90%	2.90%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Dorchester	0.896	0.976	2.62%	2.62%	5.00	5.00	0.75%	0.75%	0.5%	0.5%	5.0%	5.0%
Frederick	1.064	1.064	2.96%	2.96%	6.00	6.00	0.0%	0.0%	5.0%	5.0%	3.0%	3.0%
Garrett	0.990	0.990	2.65%	2.65%	3.50	3.50	1.0%	1.0%	4.5%	4.5%	5.0%	5.0%
Harford	1.042	1.042	3.06%	3.06%	3.30	3.30	1.0%	1.0%	5.0%	5.0%	0.0%	0.0%

County	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel/Motel	
	FY 2011	FY 2012	CY 2011	CY 2012	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012	FY 2011	FY 2012
Howard	1.150	1.150	3.20%	3.20%	2.50	2.50	1.0%	1.0%	7.5%	7.5%	5.0%	7.0%
Kent	1.022	1.022	2.85%	2.85%	3.30	3.30	0.5%	0.5%	4.5%	4.5%	5.0%	5.0%
Montgomery	0.915	0.959	3.20%	3.20%	3.45	3.45	1.0%	1.0%	7.0%	7.0%	7.0%	7.0%
Prince George's	1.319	1.319	3.20%	3.20%	2.50	2.50	1.4%	1.4%	10.0%	10.0%	5.0%	5.0%
Queen Anne's	0.767	0.847	2.85%	3.20%	4.95	4.95	0.5%	0.5%	5.0%	5.0%	5.0%	5.0%
St. Mary's	0.857	0.857	3.00%	3.00%	4.00	4.00	1.0%	1.0%	2.0%	2.0%	5.0%	5.0%
Somerset	0.884	0.884	3.15%	3.15%	3.30	3.30	0.0%	0.0%	4.0%	4.0%	5.0%	5.0%
Talbot	0.432	0.448	2.25%	2.25%	3.30	6.00	1.0%	1.0%	5.0%	5.0%	4.0%	4.0%
Washington	0.948	0.948	2.80%	2.80%	3.80	3.80	0.5%	0.5%	5.0%	5.0%	6.0%	6.0%
Wicomico	0.759	0.769	3.10%	3.10%	3.50	3.50	0.0%	0.0%	6.0%	6.0%	6.0%	6.0%
Worcester	0.700	0.700	1.25%	1.25%	3.30	3.30	0.5%	0.5%	3.0%	3.0%	4.5%	4.5%

Notes: The real property tax rates shown for Charles, Frederick, Howard, Montgomery, and Prince George's counties include special tax rates. Real property tax is per \$100 of assessed value. The income tax is a percentage of taxable income. Recordation tax is per \$500 of transaction.

Source: 2011 Local Government Budget and Tax Rate Survey; Department of Legislative Services/Maryland Association of Counties

## **Property Tax**

For fiscal 2012, eight counties – Anne Arundel, Cecil, Charles, Dorchester, Montgomery, Queen Anne’s, Talbot, and Wicomico – increased their real property tax rates. Allegany and Carroll counties decreased real property tax rates slightly. Real property tax rates range from \$0.448 per \$100 of assessed value in Talbot County to \$2.268 in Baltimore City.

## **Local Income Tax**

Queen Anne’s County increased its local income tax rate to 3.2% for calendar 2012, the highest amount authorized under State law. Anne Arundel County decreased its rate to 2.49%. Local income tax rates range from 1.25% in Worcester County to 3.2% in Baltimore City and Howard, Montgomery, Prince George’s, and Queen Anne’s counties.

## **Recordation Tax**

Talbot County increased its recordation tax rate to \$6.00 per \$500 of transaction for fiscal 2012. The range for recordation tax rates is \$2.50 per \$500 of transaction in Baltimore, Howard, and Prince George’s counties to \$6.00 per \$500 of transaction in Frederick and Talbot counties.

## **Transfer Tax**

No county changed its transfer tax rate for fiscal 2012. Local transfer tax rates range from 0.5% in six counties (Allegany, Caroline, Kent, Queen Anne’s, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Seven counties (Calvert, Carroll, Cecil, Charles, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers.

## **Admissions and Amusement Tax**

No county changed its admissions and amusement tax rate for fiscal 2012. Admissions and amusement tax rates range from 0.5% in Dorchester County to 10.0% in six jurisdictions – Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, and Prince George’s counties. Caroline County is the only jurisdiction that does not impose an admissions and amusement tax.

## **Hotel and Motel Tax**

Howard County increased its hotel and motel tax rate to 7.0% for fiscal 2012. Hotel and motel tax rates range from 3.0% in Cecil and Frederick counties to 9.5% in Baltimore City. Harford County is the only jurisdiction that does not impose a hotel and motel tax.

## **Tax Limitation Measures**

Five charter counties (Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico) have amended their charters to limit property tax rates or revenues. In Anne Arundel County, the total annual increase in property tax revenues is limited to the lesser of 4.5% or the increase in the consumer price index. In Montgomery County, the growth in property tax revenues is limited to the increase in the consumer price index; however, this limitation does not apply to new construction. In addition, the limitation may be overridden by a unanimous vote of all nine county council members. In Prince George's County, the general property tax rate is capped at \$0.96 per \$100 of assessed value. Special taxing districts, such as the Maryland-National Capital Park and Planning Commission, are not included under the tax cap. In Talbot and Wicomico counties, the total annual increase in property tax revenues is limited to the lesser of 2% or the increase in the consumer price index.



# Local Government

## Local Government Salary Actions

**The continuing downturn in the State's economy has affected the ability of local governments to provide salary enhancements. Only four county governments and three local boards of education granted either a cost-of-living adjustment or stipend to their employees in fiscal 2012. Several county governments and boards of education also implemented furlough and salary reduction plans and eliminated filled positions resulting in layoffs.**

### County Salary Actions

Although three more Maryland jurisdictions provided salary enhancements to their employees in fiscal 2012 than in the previous year, fewer boards of education provided salary enhancements and many jurisdictions continued to implement furlough and salary reduction plans to constrain personnel costs. In addition, local governments and boards of education eliminated 532 positions through layoffs.

Three county governments provided their employees with a cost-of-living adjustment (COLA) in fiscal 2012, compared to one county in fiscal 2011; one additional county provided a \$500 stipend in fiscal 2012; and four counties provided step increases in each fiscal year. However, only 3 boards of education provided COLAs, and only for some of their employees, and 9 boards provided step increases in fiscal 2012; 4 boards provided COLAs and 10 boards provided step increases in fiscal 2011. Salary actions for one county and one board of education are still pending. **Exhibit 1** compares local salary actions in fiscal 2011 and 2012, while **Exhibit 2** shows specific local salary actions for fiscal 2012.

Seven county governments designated service reduction days and/or implemented employee furloughs, ranging from 2 to 12 days depending on position or salary. In addition, three boards of education adopted furloughs ranging from 3 to 6 days for some of their employees, depending on position; one board reduced the salaries of two employees; and two boards converted some full-time positions to part-time. Three county governments and seven boards of education also eliminated filled positions resulting in employee layoffs. **Exhibit 3** describes the local government furlough and salary reduction plans for fiscal 2012.

### State Salary Actions

At the State level, salary enhancements for public employees have been curtailed in the past four years, with furloughs occurring in fiscal 2009, 2010, and 2011 and the elimination of COLAs and step increases occurring in fiscal 2010, 2011, and 2012.

**Exhibit 1**  
**Local Government Salary Actions**  
**Fiscal 2011 and 2012**

<b>COLA Amount</b>	<b>County Government</b>		<b>Public Schools</b>	
	<b><u>FY 2011</u></b>	<b><u>FY 2012</u></b>	<b><u>FY 2011</u></b>	<b><u>FY 2012</u></b>
No COLA	23	19	19	20
1.0 to 2.9%	1	2	4	2
3.0 to 3.9%	0	0	0	0
4.0 to 4.9%	0	0	0	0
5.0 to 5.9%	0	0	0	0
6.0% and Greater	0	0	0	0
Dollar Amount	0	2	0	1
Still Pending	0	1	1	1
Step Increases	4	4	10	9

	<b>State Government</b>		<b>CPI-Urban Consumers</b>	
	<b><u>FY 2011</u></b>	<b><u>FY 2012</u></b>	<b><u>FY 2011<sup>1</sup></u></b>	<b><u>FY 2012<sup>1</sup></u></b>
COLA Amount	0.0%	0.0%	2.0%	2.6%
One-time Bonus	\$0	\$750		
Furloughs <sup>2</sup>	10 Days	0		
Effective COLA <sup>3</sup>	-2.6%	0.0%		
Step Increases	No	No		

COLA: cost-of-living adjustment

CPI: Consumer Price Index

<sup>1</sup>Forecast of the CPI for fiscal 2011 and 2012 comes from Moody's Analytics.

<sup>2</sup>Maximum number of furlough and service reduction days based on salary level.

<sup>3</sup>Effective COLA in fiscal 2011 ranges from -1.2 to -3.8% depending on the number of furlough days.

**Exhibit 2**  
**Local Government Salary Actions in Fiscal 2012**

County	County Government		Board of Education		Step	Comments
	COLA	Generally	COLA	Teachers		
Allegany <sup>1</sup>	0.0%	No	1.0%	Yes	Yes	<sup>1</sup> Allegany County public school teachers will receive a 1% COLA. Administrators and support personnel will not receive a COLA.
Anne Arundel	0.0%	No	0.0%	No	No	
Baltimore City <sup>2</sup>	2.0%	Yes	1.0%	Yes	Yes	<sup>2</sup> Baltimore City employees, except police and members of the Managerial and Professional Society, will receive a 2% COLA. The city is still in negotiations with the police union. Teachers, school administrators, paraprofessionals, and school-related personnel will receive a 1% COLA.
Baltimore	0.0%	Yes	0.0%	Yes	Yes	The school system is still in negotiations with other unions and unaffiliated employees.
Calvert	0.0%	No	Pending	Pending	Pending	
Caroline	0.0%	No	0.0%	No	No	
Carroll	0.0%	No	0.0%	No	No	
Cecil <sup>3</sup>	0.0%	No	0.0%	Yes	Yes	<sup>3</sup> Cecil County is still in negotiation with firefighters and police unions.
Charles	1.0%	No	0.0%	Yes	Yes	<sup>4</sup> Garrett County employees will receive a \$500 general salary increase.
Dorchester	0.0%	No	0.0%	No	No	Roads Department employees (AFSCME) will receive a 4% COLA.
Frederick	0.0%	No	0.0%	No	No	Garrett County public school teachers and administrators will receive \$700 longevity steps; and support personnel, head custodians, and cafe managers will receive \$400 longevity steps.
Garrett <sup>4</sup>	\$500	No	0.0%	Yes	Yes	
Harford	0.0%	No	0.0%	No	No	
Howard <sup>5</sup>	0.0%	Yes	0.0%	Yes	Yes	<sup>5</sup> Howard County blue collar employees will receive a 1% COLA on July 1, 2011, and police, dispatch, and corrections employees will receive a 2% COLA on January 1, 2012. Howard County public school teachers, administrators, custodial/maintenance, and educational support personnel will receive delayed step increases.
Kent	0.0%	No	0.0%	No	No	
Montgomery	0.0%	No	0.0%	No	No	
Prince George's <sup>6</sup>	Pending	Pending	0.0%	No	No	
Queen Anne's	0.0%	No	0.0%	No	No	
St. Mary's <sup>7</sup>	\$500	No	0.0%	No	No	
Somerset <sup>8</sup>	0.0%	Yes	0.0%	Yes	Yes	<sup>6</sup> Prince George's County is still in negotiations with its employee unions.
Talbot	0.0%	No	0.0%	No	No	<sup>7</sup> St. Mary's County employees will receive a \$500 stipend.
Washington <sup>9</sup>	0.0%	No	\$500	Yes	Yes	<sup>8</sup> Somerset County public school teachers and minimum- to mid-level employees will receive a step increase in January 2012.
Wicomico	0.0%	No	0.0%	No	No	
Worcester	0.0%	No	0.0%	No	No	<sup>9</sup> Washington County Public Schools will give teachers, support personnel, and administrators in the top step a \$500 COLA.
<b>Number Granting</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>9</b>	<b>9</b>	

COLA: cost-of-living adjustment



**Exhibit 3**  
**Local Government Furlough and Salary Reduction Plans in Fiscal 2012**

<b>County</b>	<b>Furlough/ Reduction</b>	<b>Layoffs</b>	
Allegany	No	No	School system has eliminated 50.9 positions since fiscal 2008.
Anne Arundel	Yes	No	Most county employees will receive up to 12 furlough days, depending on position, including 5 designated service reduction days. Certain public safety employees will receive fewer furlough days, but are subject to other wage reductions. Only specified police officers, firefighters, and employees of boards and commissions who have salaries fixed by statute are exempt from furloughs. Employment agreements and temporary hires may be excluded from furloughs. Several merit positions were eliminated and employees reassigned. School system does not plan to implement furloughs, salary reductions, or layoffs.
Baltimore City	Yes	Yes	City employees will receive from 2 to 5 furlough days based on salary. The city also laid off 63 employees in fiscal 2012. School system does not plan any furloughs, salary reductions, or layoffs.
Baltimore	No	No	
Calvert	No	Yes	County does not plan any furloughs, salary reductions, or layoffs. School system does not plan any furloughs or salary reductions, but laid off 50 employees, including 38 teachers, 10 support employees, and 2 administrators.
Caroline	No	No	
Carroll	No	No	School system has eliminated 109.1 FTEs through attrition over the past three fiscal years.
Cecil	No	Yes	County does not plan any furloughs, salary reductions, or layoffs at this time. School system laid off 24 employees, including 6 teachers and 18 paraprofessionals, and eliminated 59 positions due to attrition.
Charles	No	No	School system has eliminated 28 positions through attrition over the past three fiscal years.
Dorchester	Yes	No	All county employees will receive a salary reduction (negative COLA) of 1.93%, and corresponding 5 furlough days. School system does not plan any furloughs, salary reductions, or layoffs.
Frederick	No	No	County government and school system indicated that layoffs were possible but that it had not yet been determined whether they would be necessary. County estimates \$4.3 million in savings due to layoffs of 91 employees in fiscal 2011 and 23 employees in fiscal 2010.
Garrett	No	No	
Harford	No	Yes	School system laid off 22 paraeducators in fiscal 2012.
Howard	No	No	

County	Furlough/ Reduction		Layoffs	
	Yes	No		
Kent	Yes	No	No	All county employees will receive a 1.92% reduction in pay in the form of 5 service reduction days. School system does not plan any furloughs, salary reductions, or layoffs, due to existing resignations, retirements, and reclassifications.
Montgomery	No	Yes	Yes	The county laid off 10 employees. The school system laid off 2 technology employees
Prince George's	Yes	Yes	Yes	All school system 12-month executive level employees will receive 3 furlough days; all nonexecutive level positions are excluded from furloughs. Athletic directors were converted from a full-time position to a part-time position. The school system laid off 343 employees, including 295 school-based positions. The county government is still in negotiations with its employee unions.
Queen Anne's	Yes	No	No	County employees will receive from 5 to 10 furlough days depending on grade. All school system employees will receive 6 furlough days. Salaries for Assistant Superintendent for Curriculum and Instruction and Director of Human Resources were reduced. Sixteen Special Education and 3 pre-K positions were converted to part-time.
St. Mary's	Yes	No	No	All school system employees, except bus drivers, attendants, and food service workers will receive 3 furlough days. County government does not plan any furloughs, salary reductions, or layoffs.
Somerset	No	Yes	Yes	School system laid off 1 employee.
Talbot	Yes	No	No	Most county employees, except public safety employees, will receive 2 furlough days. School system did not implement any furloughs, salary reductions, or layoffs.
Washington	No	No	No	
Wicomico	Yes	Yes	Yes	Specified county employees will receive from 4 to 9 furlough days depending on salary. The county also laid off 2 planning and zoning employees. School system did not implement any furloughs, salary reductions, or layoffs.
Worcester	No	Yes	Yes	School system laid off 15 educational assistants.
<b>Total</b>				
<b>Jurisdictions Implementing Plans</b>	<b>9</b>		<b>9</b>	

Source: Department of Legislative Services; Maryland Association of Counties



## Local Government

### 2012 Legislative Agenda – Maryland Municipal League

The legislative agenda for the Maryland Municipal League includes protecting and restoring State funding to municipal governments.

Most incorporated municipalities in Maryland rely upon State shared highway user revenues to maintain and improve public roads within their municipal corporate limits. More than half of all municipalities in Maryland rely on police aid to assist in providing law enforcement services in their communities. Aside from these two revenue sources, municipal governments in Maryland receive limited State support to finance public services. As a result, most municipal governments in Maryland rely on property taxes as their primary revenue source, as shown in **Exhibit 1**.

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#### Exhibit 1 Revenue Sources for Municipalities in Maryland (\$ in Millions)

	Fiscal 2000		Fiscal 2010	
	<u>Amount</u>	<u>% of Total</u>	<u>Amount</u>	<u>% of Total</u>
Property Taxes	\$218.6	30.5%	\$484.1	37.7%
Income Taxes	63.1	8.8%	87.9	6.9%
Other Local Taxes	12.2	1.7%	15.8	1.2%
Service Charges	230.1	32.1%	395.6	30.8%
State Aid	66.8	9.3%	68.3	5.3%
Federal Grants	20.5	2.9%	41.3	3.2%
County Grants	28.2	3.9%	56.8	4.4%
Other Revenues	77.5	10.8%	133.4	10.4%
<b>Subtotal</b>	<b>\$717.0</b>	<b>100.0%</b>	<b>\$1,283.2</b>	<b>100.0%</b>
Debt Proceeds	19.7		50.4	
<b>Total</b>	<b>\$736.7</b>		<b>\$1,333.6</b>	

Source: Department of Legislative Services

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In recent years, Maryland's municipal governments have been subject to reduced State funding resulting from decreases in their share of highway user revenues and police aid to help balance the State's operating budget. Last year, the General Assembly increased the share of highway user revenues for municipalities from 0.1% to 0.6% for fiscal 2012 and from 0.3% to 0.4% for fiscal 2013 and beyond. However, this funding share still reflects a sizeable decrease from the share of highway user revenues that was allocated to municipalities in the past. Reductions in police aid have also totaled 31.2% in each of the past three fiscal years. Due to these cost containment actions, the Maryland Municipal League intends to advocate for the restoration of State funding to municipalities, specifically highway user revenues and police aid in the upcoming 2012 legislative session.

# Local Government

## 2012 Legislative Agenda – Maryland Association of Counties

**Each year, the Maryland Association of Counties (MACo) selects several issues as its legislative initiatives for the upcoming session. Due to the ongoing economic challenges confronting both State and local governments, two of these priorities (protecting State funding to local governments and continuing the State's commitment to public school construction) are carried over from the last two years.**

### County Budget Security

State aid continues to be the largest revenue source for most county governments, representing 27.9% of total county revenues. Over the last five years, State funding for local governments has increased by \$785.8 million or 13.7%; however, State funding to counties and municipalities has declined by \$553.4 million or 58.0%. Most of the increases in State aid were targeted to public schools, which received an additional \$1.3 billion in State funding over the five-year period. The largest reductions in State funding have occurred to local transportation projects, law enforcement, health departments, and county correctional facilities. Other areas, including Program Open Space and teachers' retirement payments, continue to be threatened each year during the State budgeting process.

While understanding the fiscal challenges confronting the State, MACo continues to urge the General Assembly to refrain from further reductions in State funding and from shifting costs to county governments. In addition, it urges State policymakers to work with local governments to protect current State financial support for local services and take other actions to ease the ongoing financial burdens resulting from prior cost shifts and State aid reductions.

### Defend Local Land Use Autonomy

It is MACo's position that land use controls are handled more effectively by local elected officials, as they best understand the unique concerns and needs of their residents. MACo also contends that multiple statewide policy proposals – including many developed in the name of environmental protection or sustainability – have threatened this notion. MACo believes that, in the face of a proposal limiting rural development, a State Development Plan, and statewide implementation of federal pollution targets, county governments must reinforce the importance of local accountability and direct public input into land use decisions. MACo further believes that no statewide law, planning document, or set of goals can ever replace the value of locally accountable and citizen-informed planning and zoning. The addition of any further planning, zoning, or reporting mandates should be considered against the burden and cost they will place on county government.

## School Board Fiscal Accountability and Process Reforms

Recent years' struggles over school funding have highlighted county difficulties in managing public school expenses. These difficulties have resulted in differences over budget submissions, employee actions, and maintenance of effort. Counties do not seek any governance over curriculum or programmatic functions of delivering education but do seek a stronger partnership in guiding these investments of public funds. The range of approaches includes the equitable treatment of school/county personnel, improvements to the maintenance of effort calculation and waiver process, governance and disclosure of outside reserve funds, reasonable refinements to the school budget process, clearer categorical budget classifications, and determination of nonrecurring costs. MACo contends that enhancing these laws and relationships could leverage more accountability and responsiveness within the largest component of every county's budget.

## School Construction and Renovation Funding

Despite increased State support for school construction and renovation efforts in recent years, the need for State funding remains high. Moreover, the impact of State funding takes on greater significance because every State dollar invested in school projects leverages roughly two county dollars. **Exhibit 1** shows State funding for public school construction over the last six years.

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### Exhibit 1 State Funding for Public School Construction

<u>FY 2007</u>	<u>FY 2008</u>	<u>FY2009</u>	<u>FY2010</u>	<u>FY2011</u>	<u>FY2012</u>
\$322,672,000	\$401,828,000	\$346,983,000	\$266,653,000	\$263,724,000	\$311,583,000

Source: Public School Construction Program; Department of Legislative Services

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MACo urges the General Assembly to continue its commitment by keeping school construction and renovation funding a high priority while also supporting a funding level consistent with the State's own adopted multiyear goals. In addition, since the current goal expires in fiscal 2013, MACo requests the State to move toward a new multiyear funding strategy and to pursue efficiencies and flexibility in the school construction process in order to maximize the use of State and local capital funds.